

EXHIBIT I

Jeffrey Trexler

September 24, 2024

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

BOOK PEOPLE, INC., VBK,)
INC., AMERICAN)
BOOKSELLERS ASSOCIATION,)
ASSOCIATION OF)
AMERICAN PUBLISHERS,)
AUTHORS GUILD, INC.,)
COMIC BOOK LEGAL DEFENSE)
FUND)

Plaintiffs,)

VS.)

MARTHA WONG, KEVEN ELLIS,)
MIKE MORATH)

Defendants.)

Civil No.

AU: 23-CV-00858-ADA

ORAL AND VIDEOTAPED DEPOSITION OF

JEFFREY TREXLER

September 24, 2024

Volume 1

Jeffrey Trexler

September 24, 2024

Pages 2 to 5

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<p>1 ORAL AND VIDEOTAPED DEPOSITION OF JEFFREY</p> <p>2 TREXLER, produced as a witness at the instance of the</p> <p>3 Defendants, and duly sworn, was taken in the</p> <p>4 above-styled and numbered cause on the 24th day of</p> <p>5 September, 2024, from 9:03 a.m. to 2:26 p.m., via</p> <p>6 videoconference, before Abigail Guerra, CSR, in and for</p> <p>7 the State of Texas, reported by machine shorthand, where</p> <p>8 all attendees appeared via Zoom in their respective</p> <p>9 locations, pursuant to the Federal Rules of Civil</p> <p>10 Procedure and the provisions stated on the record or</p> <p>11 attached hereto.</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 INDEX</p> <p>2</p> <p>3 Appearances..... 3</p> <p>4 JEFFREY TREXLER</p> <p>5 Examination by Mr. Berg..... 6</p> <p>6 Signature and Changes..... 188</p> <p>7 Reporter's Certificate..... 190</p> <p>8</p> <p>9</p> <p>10 EXHIBITS</p> <p>11 NO. DESCRIPTION PAGE</p> <p>12 Exhibit A Notice of Deposition 11</p> <p>13 Exhibit B "Nonprofit Quarterly" 15</p> <p>14 Exhibit C CBLDF Case Files 28</p> <p>15 Exhibit D Texas Penal Code, Title 9 53</p> <p>16 Exhibit E CBDLF 000001 - 000368 67</p> <p>17 Exhibit F Panel Power CBDLF Website 136</p> <p>18 Exhibit G Plaintiff Comic Books Responses 170</p> <p>19 and Objections to Defendant</p> <p>20 Morath's First Set of Discovery</p> <p>21 Requests</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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<p>1 A P P E A R A N C E S</p> <p>2 (Appearing Remotely)</p> <p>3</p> <p>4 FOR THE PLAINTIFFS:</p> <p>5 Mr. Michael J. Lambert</p> <p>6 Mr. Reid Pillifant</p> <p>7 HAYNES BOONE, LLP</p> <p>8 98 San Jacinto Boulevard</p> <p>9 Suite 1500</p> <p>10 Austin, Teas 78701</p> <p>11 Phone: (512) 867-8412</p> <p>12 Email: Michael.Lambert@haynesboone.com</p> <p>13 Reid.pillifant@haynesboone.com</p> <p>14</p> <p>15 FOR THE DEFENDANTS:</p> <p>16 Mr. Zachary Berg</p> <p>17 Ms. Munera Al-Fuhaid</p> <p>18 OFFICE OF THE ATTORNEY GENERAL OF TEXAS</p> <p>19 300 West 15th Street</p> <p>20 6th Floor</p> <p>21 Austin, Texas 78701</p> <p>22 Phone: (512) 463-2100</p> <p>23 Email: Zachary.Berg@oag.texas.gov@oag.texas.gov</p> <p>24 Munera.al-fuhaid@oag.texas.gov</p> <p>25</p> <p>16 ALSO PRESENT:</p> <p>17 Mr. John Schmitzer, Videographer</p> <p>18 Mr. Jeremy Cunha, Technician</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 THE VIDEOGRAPHER: We on the record. This</p> <p>2 begins Media No. 1 in the deposition of Jeff Trexler as</p> <p>3 corporate representative of Comic Book Defense or --</p> <p>4 excuse me -- Comic Book Legal Defense Fund in the matter</p> <p>5 of Book People Inc., et al versus Wong, et al, in the</p> <p>6 United States District Court Western District of Texas,</p> <p>7 Austin Division, Case No. 23-CV-00858-ADA.</p> <p>8 Today is Tuesday, September 24, 2024, and</p> <p>9 the time is approximately 9:02 a.m. Central. This</p> <p>10 deposition is being taken via Zoom at the request of</p> <p>11 defendants. The videographer is John Schmitzer of Magna</p> <p>12 Legal Services.</p> <p>13 Will counsel and all parties present state</p> <p>14 their appearances and whom they represent.</p> <p>15 MR. BERG: For the defendant, Zachary Berg</p> <p>16 and Munera Al-Fuhaid.</p> <p>17 MR. LAMBERT: Michael Lambert, and I'm here</p> <p>18 with my cocounsel Reid Pillifant from Haynes and Boone,</p> <p>19 and we represent Comic Book Legal Defense Fund and Jeff</p> <p>20 Trexler.</p> <p>21 THE VIDEOGRAPHER: Thank you.</p> <p>22 And will the court reporter please swear in</p> <p>23 the witness.</p> <p>24 JEFFREY TREXLER,</p> <p>25 having been first duly sworn, testified as follows:</p>

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Pages 6 to 9

<p style="text-align: right;">Page 6</p> <p>1 DIRECT EXAMINATION</p> <p>2 BY MR. BERG:</p> <p>3 Q. Morning, Mr. Trexler. Where are you Zooming</p> <p>4 from today?</p> <p>5 A. I am in New York City.</p> <p>6 Q. Wonderful.</p> <p>7 Mr. Trexler, would you, please, state and</p> <p>8 spell your name for the record?</p> <p>9 A. Sure.</p> <p>10 My name -- I'll just -- my full name --</p> <p>11 although you can call me "Jeff" -- is J-E-F-F-R-E-Y,</p> <p>12 Trexler, T-R-E-X, as in xylophone, L-E-R.</p> <p>13 Q. Have you ever been deposed before?</p> <p>14 A. Yes.</p> <p>15 Q. Some of this may be a reminder, but I'm going</p> <p>16 to go over some introductory stuff, and then I'll move</p> <p>17 on to the main subjects of the deposition, okay?</p> <p>18 A. Sure.</p> <p>19 Q. You understand that you are under oath, right?</p> <p>20 A. Yes.</p> <p>21 Q. That even though we are on Zoom, as far as your</p> <p>22 obligation to be truthful, it is the same as if we were</p> <p>23 in a courtroom, understand?</p> <p>24 A. Yes.</p> <p>25 Q. For the court reporter, you will need to</p>	<p style="text-align: right;">Page 8</p> <p>1 of before we take a break; is that fair?</p> <p>2 A. That's fine with me.</p> <p>3 Q. And mandatory question: Are you aware of</p> <p>4 anything that would affect your ability to testify</p> <p>5 truthfully today?</p> <p>6 A. No.</p> <p>7 Q. And have you consumed any alcohol or drugs</p> <p>8 today that would affect your ability to testify</p> <p>9 truthfully?</p> <p>10 A. I live a very boring life, so the answer is no.</p> <p>11 Q. In preparing for this deposition, did you</p> <p>12 review any documents?</p> <p>13 A. Trying to think. I just recently completed</p> <p>14 discovery, so I looked over a lot of material in</p> <p>15 conjunction with discovery. I'm very busy.</p> <p>16 Q. Without revealing what you discussed, did you</p> <p>17 speak with an attorney in preparation for this</p> <p>18 deposition?</p> <p>19 A. I have spoken with an attorney.</p> <p>20 Q. And, again, without revealing what you</p> <p>21 discussed, which attorney or attorneys did you meet</p> <p>22 with?</p> <p>23 A. Michael and -- I believe -- I just don't</p> <p>24 remember who all was in the room. I know Mike was.</p> <p>25 Q. And how long did you meet with Michael and</p>
<p style="text-align: right;">Page 7</p> <p>1 provide verbal answers like "yes" or "no" rather than</p> <p>2 nodding or shaking your head. You've done a good job of</p> <p>3 it so far.</p> <p>4 This is extra important here today since</p> <p>5 this is a deposition on Zoom. Sometimes the connection</p> <p>6 might be poor, and we may have attorneys participating</p> <p>7 remotely who may not be able to see you if they're</p> <p>8 dialing in.</p> <p>9 Does that make sense?</p> <p>10 A. It makes sense.</p> <p>11 Q. It also helps the court reporter and other</p> <p>12 attorneys if we don't talk over each other. It's much</p> <p>13 easier to understand the transcript if I let you finish</p> <p>14 your answer before I ask my next question, and if you</p> <p>15 let me finish my question before answering.</p> <p>16 Does that make sense?</p> <p>17 A. Yes.</p> <p>18 Q. If you don't understand the question, please</p> <p>19 let me know. And if you do answer, then I'll assume</p> <p>20 that you did understand; is that fair?</p> <p>21 A. That's the rule.</p> <p>22 Q. If you need a break at any point, just let me</p> <p>23 know. I want you to be as comfortable as possible. I</p> <p>24 only ask that, as long as it's not a medical emergency,</p> <p>25 you finish answering any questions we're in the middle</p>	<p style="text-align: right;">Page 9</p> <p>1 team?</p> <p>2 A. I couldn't tell you.</p> <p>3 Q. Besides Haynes Boone, do you have any other</p> <p>4 attorneys representing you in this matter?</p> <p>5 A. No.</p> <p>6 Q. Do you have prepared notes with you that you</p> <p>7 intend to consult during the deposition?</p> <p>8 A. No.</p> <p>9 Q. And Comic Book Legal Defense Fund is a</p> <p>10 plaintiff in this case, correct?</p> <p>11 A. Yes.</p> <p>12 Q. And you understand that you were designated as</p> <p>13 the corporate witness for Comic Book Legal Defense Fund,</p> <p>14 correct?</p> <p>15 A. Yes.</p> <p>16 Q. As a shorthand, I'm going to refer to Comic</p> <p>17 Book Legal Defense Fund as "Comic Book LDF" or "Comic</p> <p>18 Book" going forward, okay?</p> <p>19 A. If that's your preference. The stand acronym</p> <p>20 is "CBLDF," but I'm fine to do whatever you want to do.</p> <p>21 Q. Okay.</p> <p>22 MR. BERG: Could we bring up the</p> <p>23 "Plaintiff's Responses and Objections to Defendant's</p> <p>24 Notice of Intent to Take Oral and Videotape Deposition"?</p> <p>25 That's --</p>

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Pages 10 to 13

<p style="text-align: right;">Page 10</p> <p>1 THE TECHNICIAN: (Complies.)</p> <p>2 MR. BERG: Okay.</p> <p>3 Q. (BY MR. BERG) So this document is titled</p> <p>4 "Plaintiff's Comic Book Legal Defense Fund's Responses</p> <p>5 and Objections to Defendant Morath's First" -- no.</p> <p>6 Sorry. Not that one.</p> <p>7 MR. BERG: The document that is dated</p> <p>8 September 12th, "Comic Book LDF's Response and" -- okay.</p> <p>9 THE TECHNICIAN: (Complies.)</p> <p>10 Q. (BY MR. BERG) So this document is titled</p> <p>11 "Plaintiff Comic Book Legal Defense Fund's Responses and</p> <p>12 Objections to Defendant's Morath's Notice of Intent to</p> <p>13 Take Oral and Videotape Deposition of Comic Book Legal</p> <p>14 Defense Fund Pursuant to Rule 30(b)(6)."</p> <p>15 Did I read that correctly?</p> <p>16 A. Wasn't tracking every word you said, so I</p> <p>17 assume that you read (as read): "Plaintiff's Comic Book</p> <p>18 Legal Defense Fund's Responses and Objections to</p> <p>19 Defendant Morath's Notice of Intent to take oral and</p> <p>20 Videotaped Deposition of Comic Book Legal Defense Fund</p> <p>21 Pursuant to Rule 30(b)(6)."</p> <p>22 If that's what you said, then that's what</p> <p>23 it was.</p> <p>24 Q. And the second paragraph of the main body reads</p> <p>25 (as read): "Subject to the objection below, Jeff</p>	<p style="text-align: right;">Page 12</p> <p>1 clarify.</p> <p>2 A. Okay.</p> <p>3 Q. What is Comic Book LDF?</p> <p>4 A. The Comic Book Legal Defense Fund is a</p> <p>5 Section 501(c)(3) nonprofit organization dedicated to</p> <p>6 protecting the legal rights of the comic arts and the</p> <p>7 comic arts community.</p> <p>8 Q. When was Comic Book LDF founded?</p> <p>9 A. The Comic Book Legal Defense Fund was founded</p> <p>10 in the mid-1980s starting in 1986, 1987.</p> <p>11 Q. And approximately how many employees does Comic</p> <p>12 Book LDF have?</p> <p>13 A. Comic Book Legal Defense Fund has two people</p> <p>14 working for it currently.</p> <p>15 Q. Are you one of those?</p> <p>16 A. I am one of those.</p> <p>17 Q. And who is the other?</p> <p>18 A. Rachael Andres, our operations manager.</p> <p>19 Q. Do you have non-paid employees or volunteers?</p> <p>20 A. We have volunteers.</p> <p>21 Q. Approximately, how many regular volunteers do</p> <p>22 you have?</p> <p>23 A. The number of volunteers varies based on the</p> <p>24 circumstance.</p> <p>25 Q. Approximately, how many volunteers do you have</p>
<p style="text-align: right;">Page 11</p> <p>1 Trexler will testify as a corporate representative of</p> <p>2 CBLDF regarding Topics 1 through 17."</p> <p>3 Did I read that correctly?</p> <p>4 A. Yes.</p> <p>5 Q. And are you in, indeed, prepared to testify</p> <p>6 about Topics 1 through 17?</p> <p>7 A. That's -- yes.</p> <p>8 MR. BERG: Okay. Let's mark this as</p> <p>9 Exhibit A, and you can take it down.</p> <p>10 (Exhibit A marked.)</p> <p>11 THE TECHNICIAN: (Complies.)</p> <p>12 Q. (BY MR. BERG) If I use the term "HB 900"</p> <p>13 today, I'm referring to the enacted legislation that</p> <p>14 forms the basis of this lawsuit Texas House Bill 900</p> <p>15 also known as the "Reader Act" restricting explicit and</p> <p>16 adult-designated educational resources, which passed</p> <p>17 through 88th Legislature Regular Session 2023."</p> <p>18 Does that make sense?</p> <p>19 A. Makes sense.</p> <p>20 Q. And if I use the term "Texas schools," I'm</p> <p>21 using that as a shorthand for Texas public school</p> <p>22 districts, school libraries, and open enrollment charter</p> <p>23 schools, okay?</p> <p>24 A. Okay.</p> <p>25 Q. And if it gets confusing, just ask me to</p>	<p style="text-align: right;">Page 13</p> <p>1 as we sit here today?</p> <p>2 A. Right now, it depends. Would you -- how you</p> <p>3 define volunteer. It depends -- it really depends on</p> <p>4 you define it.</p> <p>5 We have dozens of people who volunteer to</p> <p>6 help the organization. We have people actively</p> <p>7 assisting in matters at various conventions which can</p> <p>8 range anywhere from 8 to 20 people at a specific</p> <p>9 convention largely local.</p> <p>10 Q. Is Comic Book LDF a membership organization?</p> <p>11 A. Comic Book Legal Defense Fund has members.</p> <p>12 Q. How does someone --</p> <p>13 A. Uh-huh.</p> <p>14 Q. How does someone become a member of Comic Book</p> <p>15 LDF?</p> <p>16 A. Okay.</p> <p>17 Comic Book Legal Defense Fund, since its</p> <p>18 beginning, has given people the opportunity to register</p> <p>19 with the organization as members, and there are various</p> <p>20 membership tiers.</p> <p>21 Q. What services does Comic Book legal defense</p> <p>22 fund provide to its members?</p> <p>23 A. The Legal Defense Fund protects the rights of</p> <p>24 the comic arts community and provides education on legal</p> <p>25 issues pertaining to the comic arts. We cover</p>

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<p style="text-align: right;">Page 14</p> <p>1 everything that could affect anybody who is interested</p> <p>2 in the comic arts from creators; publishers; retailers;</p> <p>3 distributors; fans who want to have access to works;</p> <p>4 even cosplayers, people who dress as their favorite</p> <p>5 character; or, you know, work in animation. We have a</p> <p>6 wide scope of interest that we serve.</p> <p>7 Q. Besides members, how is Comic Book LDF funded?</p> <p>8 A. Comic Book Legal Defense Fund has -- we have</p> <p>9 donations -- also donations outside of membership,</p> <p>10 grants as well -- historically, as well as auctions and</p> <p>11 book sales and signings. All very standard in the</p> <p>12 comics community.</p> <p>13 Q. You executed a Declaration in this case,</p> <p>14 correct?</p> <p>15 A. That's correct.</p> <p>16 Q. And in your Declaration dated July 24th, 2023,</p> <p>17 you identified yourself as the interim director for the</p> <p>18 Comic Book Legal Defense Fund, correct?</p> <p>19 A. That is correct.</p> <p>20 I don't have that document in front of me,</p> <p>21 so I am relying purely on memory, and I assume that I</p> <p>22 did that.</p> <p>23 Q. And what is your current position?</p> <p>24 A. Interim director.</p> <p>25 Q. Approximately, how long have you been interim</p>	<p style="text-align: right;">Page 16</p> <p>1 Q. (BY MR. BERG) First paragraph on Page 1 reads</p> <p>2 (as read): "The Comic Book Legal Defense Fund has</p> <p>3 announced Jeff Trexler as its interim executive</p> <p>4 director. Trexler replaces Charles Brownstein, who</p> <p>5 served as executive director for 18 years, after</p> <p>6 Brownstein resigned in June amid renewed allegations of</p> <p>7 sexually assaulting comics creator Taki Soma in 20" --</p> <p>8 sorry -- "2005."</p> <p>9 Did I read that correctly?</p> <p>10 A. You did indeed.</p> <p>11 MR. BERG: Let's go to the third paragraph</p> <p>12 on Page 1.</p> <p>13 THE TECHNICIAN: (Complies.)</p> <p>14 MR. BERG: "Brownstein joined."</p> <p>15 Q. (BY MR. BERG) It reads (as read): "Brownstein</p> <p>16 joined CBLDF as executive director in 20" -- 2002. His</p> <p>17 resignation comes as women continue sharing experiences</p> <p>18 of sexual harassment, assault, and abuse by male</p> <p>19 professionals in the comics industry. Aside from Soma's</p> <p>20 initial charge of assault at a comics convention</p> <p>21 in 2005, an encounter Brownstein recounted from his</p> <p>22 perspective in a 2006 statement and for which he was</p> <p>23 reportedly disciplined but not fired. Comics</p> <p>24 professional Kris Simon recently came forward to share</p> <p>25 her own experiences with Brownstein. Former CBLDF</p>
<p style="text-align: right;">Page 15</p> <p>1 director?</p> <p>2 A. Since September 2020.</p> <p>3 Q. And you're an attorney, correct?</p> <p>4 A. That is correct.</p> <p>5 Q. What were the circumstances by which you became</p> <p>6 interim director?</p> <p>7 A. The previous executive director departed, and I</p> <p>8 took the position. Actually, I took the position of</p> <p>9 interim director.</p> <p>10 MR. BERG: Will you please bring up the</p> <p>11 document "Comic Book Nonprofit Seeks..."</p> <p>12 THE TECHNICIAN: (Complies.)</p> <p>13 MR. BERG: We'll mark this as Exhibit B.</p> <p>14 (Exhibit B marked.)</p> <p>15 Q. (BY MR. BERG) This is an article from</p> <p>16 "Nonprofit Quarterly" that appears to have also ran in</p> <p>17 "Publishers Weekly" and "The Hollywood Reporter" titled</p> <p>18 "Comic Book Nonprofit Seeks to Rebuild After Sexual</p> <p>19 Harassment Scandal. The author is Drew Adams, and the</p> <p>20 article is dated August 13th, 2020.</p> <p>21 Did I read that correctly?</p> <p>22 A. Correct.</p> <p>23 MR. BERG: Will you zoom in on the first</p> <p>24 paragraph -- first full paragraph.</p> <p>25 THE TECHNICIAN: (Complies.)</p>	<p style="text-align: right;">Page 17</p> <p>1 development manager, Cheyenne Allot also spoke out after</p> <p>2 her release from a 2010 nondisclosure agreement. "The</p> <p>3 Comics Journal" has extensively investigated both Soma's</p> <p>4 2005 account and Allot's testimony, the latter of which</p> <p>5 details years of problem behavior from Brownstein and</p> <p>6 lack of board oversight."</p> <p>7 Did I read that correctly?</p> <p>8 A. You did indeed.</p> <p>9 Q. The second sentence read talks about (as read):</p> <p>10 "An environment of sexual harassment assault and abuse</p> <p>11 by male professionals in the comics industry."</p> <p>12 Are you aware of any such trend?</p> <p>13 MR. LAMBERT: Objection, form.</p> <p>14 Counselor, how is this -- what topic is</p> <p>15 this related to? I would like to know that before we go</p> <p>16 too much further.</p> <p>17 MR. BERG: General background on the</p> <p>18 organization, his personal knowledge; and I'll loop it</p> <p>19 back.</p> <p>20 MR. LAMBERT: But what topic is that? What</p> <p>21 number is that? I would be -- I would like to know</p> <p>22 that. I don't remember seeing a general one about</p> <p>23 background, but I could be wrong.</p> <p>24 MR. BERG: I'll ask Mr. Trexler as to his</p> <p>25 personal knowledge.</p>

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Pages 18 to 21

<p style="text-align: right;">Page 18</p> <p>1 MR. LAMBERT: That's perfectly fine, but I</p> <p>2 also would like to know what topic it relates to.</p> <p>3 As you know, we designated Mr. Trexler for</p> <p>4 Topics 1 through 17 and 1 through 17 only. So if this</p> <p>5 relates to one of those documents, then some limiting</p> <p>6 questions about his personal knowledge would be</p> <p>7 acceptable but not beyond this topic.</p> <p>8 I would ask you to reissue a new notice if</p> <p>9 we're -- if this is going to a new topic that we're</p> <p>10 talking about so we can make proper objections, but this</p> <p>11 does not seem to be on one of the listed of topics,</p> <p>12 unless you can tell me otherwise.</p> <p>13 MR. BERG: Well, I can ask outside of the</p> <p>14 listed topics as to his person knowledge. I --</p> <p>15 obviously, I wouldn't have expected that Mr. Trexler</p> <p>16 would be prepped on this topic. To the extent that he</p> <p>17 lacks person knowledge, he can testify to that, and</p> <p>18 we'll move on.</p> <p>19 MR. LAMBERT: Understood. I will be making</p> <p>20 objections because they're beyond the topic, but I do</p> <p>21 understand that he will, you know, he will respond, but</p> <p>22 I would appreciate it if this has some relation to this</p> <p>23 case and that they're kept limited. If not -- if it</p> <p>24 goes further than that, then we'll stop the deposition,</p> <p>25 and we'll go to the judge about this, but we'll -- I</p>	<p style="text-align: right;">Page 20</p> <p>1 A. Okay.</p> <p>2 Q. Do you see these are somewhat broad concepts?</p> <p>3 A. And your definition of personal knowledge is</p> <p>4 interesting because I personally was never the subject</p> <p>5 of sexual harassment, and I was not present at any of</p> <p>6 the incidents involving Charles Brownstein that are</p> <p>7 mentioned in this paragraph.</p> <p>8 Q. Very well. If you don't have any personal</p> <p>9 knowledge, we'll move on.</p> <p>10 MR. BERG: We can take down this document.</p> <p>11 Oh wait. Wait. We marked this exhibit already.</p> <p>12 THE TECHNICIAN: Correct.</p> <p>13 MR. BERG: Let's take this down and bring</p> <p>14 up CBLDF case files "U.S. versus Handley."</p> <p>15 THE TECHNICIAN: (Complies.)</p> <p>16 MR. BERG: And I'll tell counsel that this</p> <p>17 will go pretty quickly into topics that have been</p> <p>18 noticed.</p> <p>19 MR. LAMBERT: Thank you.</p> <p>20 MR. BERG: So this is -- can you go to the</p> <p>21 bottom left of the page, please?</p> <p>22 THE TECHNICIAN: (Complies.)</p> <p>23 Q. (BY MR. BERG) Would you agree that this</p> <p>24 document was pulled off of CBLDF's website?</p> <p>25 A. I haven't had -- read it word for word; and,</p>
<p style="text-align: right;">Page 19</p> <p>1 will allow a few questions, but I will be objecting.</p> <p>2 Q. (BY MR. BERG) Mr. Trexler, do you have any</p> <p>3 personal knowledge about an environment of sexual</p> <p>4 harassment, assault, and abuse by male professionals in</p> <p>5 the comic history?</p> <p>6 MR. LAMBERT: Objection, form.</p> <p>7 A. I have two questions, if the objections are</p> <p>8 done.</p> <p>9 MR. LAMBERT: They are.</p> <p>10 THE WITNESS: Okay. I want to --</p> <p>11 MR. LAMBERT: Yes, they are.</p> <p>12 A. How do you define "environment," and how do you</p> <p>13 define "personal knowledge"? Just because I didn't see</p> <p>14 the word -- and I can be corrected. I didn't see the</p> <p>15 word "environment" in this text, so since you were</p> <p>16 introducing that, I wanted to know what your definition</p> <p>17 of environment was; and I want to know what your</p> <p>18 definition of personal knowledge is because that's</p> <p>19 necessary for me to answer the question in a way that</p> <p>20 will satisfy you.</p> <p>21 Q. (BY MR. BERG) Personal knowledge would be</p> <p>22 knowledge based on your personal experiences versus</p> <p>23 something another person told you. Environment in the</p> <p>24 common parlance of a work environment or industry</p> <p>25 environment.</p>	<p style="text-align: right;">Page 21</p> <p>1 again, this is a document from before my becoming part</p> <p>2 of the organization. So I'm -- it has a CBLDF URL, and</p> <p>3 I know this was a case in which they were at least -- at</p> <p>4 least addressed publicly, but that's -- I'm going to</p> <p>5 say, again, that it appears to be the case.</p> <p>6 MR. BERG: Can we zoom out?</p> <p>7 THE TECHNICIAN: (Complies.)</p> <p>8 Q. (BY MR. BERG) You said that this document is</p> <p>9 from before you were interim director?</p> <p>10 A. Uh-huh.</p> <p>11 Q. How are you able to determine the date this</p> <p>12 document was created?</p> <p>13 A. Because I didn't write it. So, yeah.</p> <p>14 Q. Are you aware that this is a case in which</p> <p>15 CBLDF participated?</p> <p>16 A. I do not know the extent of the CBLDF's</p> <p>17 involvement in the case. I only know what is in this</p> <p>18 article, and my vague memories from the time that the</p> <p>19 case was taking place. I was not part of the CBLDF at</p> <p>20 this time.</p> <p>21 MR. BERG: If we -- go to the first, full</p> <p>22 paragraph on Page 2.</p> <p>23 THE TECHNICIAN: (Complies.)</p> <p>24 Q. (BY MR. BERG) I'll represent to you in this</p> <p>25 case a Christopher Handley was arrested, prosecuted and</p>

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Pages 22 to 25

<p style="text-align: right;">Page 22</p> <p>1 pled guilty to provisions of the PROTECT Act (as read):</p> <p>2 "Which empowered prosecutors with greater ability in</p> <p>3 bringing cases against crimes related to the sexual</p> <p>4 exploitation of minors."</p> <p>5 I will represent to you that the facts in</p> <p>6 this case was that Mr. Handley possessed drawings of a</p> <p>7 minor or minors having sex with adults.</p> <p>8 Would you agree that depictions of children</p> <p>9 having sex with adults do not belong in school</p> <p>10 libraries?</p> <p>11 A. My answer to that question is going to depend</p> <p>12 on the book; what is contained in the picture; what's</p> <p>13 contained in the book; what -- how you define sex? It</p> <p>14 really comes down to a lot of definitions in the</p> <p>15 material question.</p> <p>16 Q. For sex, we'll say sexual intercourse.</p> <p>17 A. Again, it's going to come down --</p> <p>18 Q. Is there a scenario in which you believe that</p> <p>19 depictions of children having sexual intercourse with</p> <p>20 adults belong in school libraries?</p> <p>21 MR. LAMBERT: Objection, form.</p> <p>22 A. Yeah, again --</p> <p>23 Q. (BY MR. BERG) Sorry. What was your answer?</p> <p>24 A. You're talking to a classics major. I used to</p> <p>25 study ancient Greek.</p>	<p style="text-align: right;">Page 24</p> <p>1 manga?</p> <p>2 A. You can say manga. You can say manga</p> <p>3 {pronunciation}.</p> <p>4 Q. -- manga depictions of sexual relations between</p> <p>5 children and adults.</p> <p>6 I will represent to you that my</p> <p>7 understanding of this case is that CBLDF did not</p> <p>8 represent, him but that they participated in the expert</p> <p>9 witness --</p> <p>10 A. Uh-huh.</p> <p>11 Q. -- process?</p> <p>12 A. I believe that's what it said in the article.</p> <p>13 Q. Yes.</p> <p>14 Would you agree that depictions of children</p> <p>15 have sex with adults in a manga comic do not belong in</p> <p>16 school libraries?</p> <p>17 MR. LAMBERT: Objection, form.</p> <p>18 A. Again, I don't know the material involved in</p> <p>19 this case. I don't know the images in this case. I am</p> <p>20 not aware of any instances in which any of the images in</p> <p>21 this case or any of the books in this case -- if it was</p> <p>22 one book, multiple. Again, haven't reviewed this --</p> <p>23 have ever been in a school library.</p> <p>24 We defend cases as they come to us. I</p> <p>25 would -- again, if this were a case in which I was</p>
<p style="text-align: right;">Page 23</p> <p>1 Q. We'll say a book written after 1980.</p> <p>2 A. I'm not sure the difference between depiction</p> <p>3 in a book before 1980 and a book after 1980. I wasn't</p> <p>4 sure what you're getting at there.</p> <p>5 But it's really going to depend on the</p> <p>6 context. I mean, there's works in the Louvre. There</p> <p>7 are -- the works of Plato talk about men discussing</p> <p>8 philosophy in order to protect their sexual relationship</p> <p>9 with prepubescent children. I've never spoken out on</p> <p>10 banning the works of Plato from schools.</p> <p>11 It really is going to be dependent on the</p> <p>12 work and the context. There's some works that would</p> <p>13 not, and there's some works that are.</p> <p>14 My understanding is -- and you're looking</p> <p>15 at this paragraph -- my understanding is that just based</p> <p>16 on the very brief -- because I don't remember the</p> <p>17 specifics of this case -- I am simply not aware that any</p> <p>18 of the books at issue in this particular case were books</p> <p>19 that were in school curricula or libraries or clubs.</p> <p>20 So maybe you can enlighten me on that</p> <p>21 because, again, I wasn't involved in this case.</p> <p>22 Q. Yes.</p> <p>23 My question prompted by this was: Whether</p> <p>24 materials similar to those with which Mr. Handley was</p> <p>25 arrested, which were -- is the correct pronunciation</p>	<p style="text-align: right;">Page 25</p> <p>1 involved and I saw the material of which I had reviewed</p> <p>2 it and I saw the material, I could perhaps opine more;</p> <p>3 but I literally do not know what you are talking about</p> <p>4 in the most -- in the strictest sense, so I can't opine</p> <p>5 on it. You're asking me to generalize from -- not from</p> <p>6 a specific that you can't define.</p> <p>7 Q. (BY MR. BERG) Is there any form of sexual</p> <p>8 content that you think should never be in school</p> <p>9 libraries?</p> <p>10 MR. LAMBERT: Objection, form.</p> <p>11 A. Again, there's a vast...</p> <p>12 Q. (BY MR. BERG) Can you describe a piece of</p> <p>13 sexual content that you do not think should be in school</p> <p>14 libraries?</p> <p>15 MR. LAMBERT: Objection, form.</p> <p>16 A. I think it's going to come down to the nature</p> <p>17 of the library and the nature of the access to the</p> <p>18 material.</p> <p>19 Q. (BY MR. BERG) A school library of a K to 12</p> <p>20 school.</p> <p>21 A. And, again, it's going to come down to the</p> <p>22 school library. It's going to come down to access to</p> <p>23 the material, the library's mission, the nature of the</p> <p>24 community, and what the community is -- considers to be</p> <p>25 inconsistent. That, with its -- with the values --</p>

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<p style="text-align: right;">Page 26</p> <p>1 community values.</p> <p>2 I am not going to give a blanket statement</p> <p>3 as to all of the works of literature and video and</p> <p>4 everything that's out there, nor am I going to -- nor am</p> <p>5 I going to try to come up with an ironclad rule.</p> <p>6 Q. Let me try to provide more details for this</p> <p>7 hypothetical.</p> <p>8 A. Great.</p> <p>9 Q. Let's say an elementary school in the Austin</p> <p>10 suburbs. Is there any form of sexual content that you</p> <p>11 do not think -- that you think should not be in an</p> <p>12 elementary school library in suburban Austin?</p> <p>13 MR. LAMBERT: Objection, form.</p> <p>14 A. I am going to let the community of Austin</p> <p>15 decide. And then if there are objections to that</p> <p>16 material and somebody comes to us concerning that</p> <p>17 material, then I will address that particular case.</p> <p>18 Q. (BY MR. BERG) So would it be a correct summary</p> <p>19 of your position to say that you would not object to the</p> <p>20 sexual content of any material as long as the Austin</p> <p>21 community was okay with it?</p> <p>22 MR. LAMBERT: Objection, form.</p> <p>23 A. The -- everything is going to be -- everything</p> <p>24 is going to be case dependent.</p> <p>25 Q. (BY MR. BERG) Is there any piece of material</p>	<p style="text-align: right;">Page 28</p> <p>1 whether the community approved or not?</p> <p>2 MR. LAMBERT: Objection, form.</p> <p>3 A. And you're saying CBLDF is doing the selling?</p> <p>4 What -- who is selling here? At one point, you say</p> <p>5 members. At one point, you said CBLDF. At one point, I</p> <p>6 originally think you said you. Who is doing the selling</p> <p>7 here?</p> <p>8 Q. (BY MR. BERG) We'll say a CBLDF member --</p> <p>9 A. Uh-huh.</p> <p>10 Q. -- selling a book to an Austin elementary</p> <p>11 school with some sexual content about which you are</p> <p>12 unsure whether the community had objections to or</p> <p>13 approved of.</p> <p>14 Would the entity Comic Book LDF have an</p> <p>15 expressive viewpoint of that sale?</p> <p>16 MR. LAMBERT: Objection, form.</p> <p>17 THE WITNESS: Thank you. Thank you. I</p> <p>18 should have paused.</p> <p>19 A. Remember, as I've said, we handle cases on a</p> <p>20 case-by-case basis. We don't prescribe or monitor</p> <p>21 member sales activity.</p> <p>22 (Exhibit C marked.)</p> <p>23 MR. BERG: Let's mark this Exhibit C, and</p> <p>24 then you can take that down and bring up the Complaint.</p> <p>25 THE TECHNICIAN: (Complies.)</p>
<p style="text-align: right;">Page 27</p> <p>1 that a Comic Book LDF member sells that you would be</p> <p>2 uncomfortable selling to an elementary school in</p> <p>3 suburban Austin?</p> <p>4 MR. LAMBERT: Objection, form.</p> <p>5 A. If we have -- in the publishing industry, books</p> <p>6 are marketed to different demographics. And publisher</p> <p>7 markets to specific demographics, I, personally -- and</p> <p>8 you asked if I would sell -- I wouldn't. Typically,</p> <p>9 would not.</p> <p>10 Again -- but, again, a school could look</p> <p>11 and say, hey, we think our concept of that demographic</p> <p>12 is different from the publisher, and we think it's</p> <p>13 actually appropriate for the community. So, really,</p> <p>14 it's going to be dependent on the community, and the</p> <p>15 characterization by the publisher and where the</p> <p>16 publisher wants it to go.</p> <p>17 Again, I'm just simply not willing to come</p> <p>18 out with a blanket statement that every community has</p> <p>19 the exact same standard, and there's an ironclad rule</p> <p>20 that if there's a particular image or particular content</p> <p>21 that it's to be excluded. I really have to do it on a</p> <p>22 case-by-case basis.</p> <p>23 Q. (BY MR. BERG) Would CBLDF have any expressive</p> <p>24 viewpoint in selling a book with sexual content to an</p> <p>25 Austin elementary school about which you were unsure</p>	<p style="text-align: right;">Page 29</p> <p>1 MR. BERG: We can go to Page 7, please.</p> <p>2 A. Could you excuse me just for one second. There</p> <p>3 is -- I have my phone here as a clock, and I think one</p> <p>4 of my app's been spammed, and I'm getting a ton of</p> <p>5 notices about crypto. So -- unless -- it's a little</p> <p>6 distracting. So if you don't mind, I'm going to figure</p> <p>7 out how to stop this while you pull up your stuff.</p> <p>8 MR. BERG: Could you please zoom in on</p> <p>9 Paragraph 12?</p> <p>10 THE TECHNICIAN: (Complies.)</p> <p>11 A. Uh-huh.</p> <p>12 Q. (BY MR. BERG) It reads (as read): "Plaintiff</p> <p>13 Comic Book Legal Defense Fund is a nonprofit</p> <p>14 organization dedicated to protecting the legal rights of</p> <p>15 the comic arts community." There's talk about</p> <p>16 Declaration, and then it says (as read): "With a</p> <p>17 membership that includes creators, publishers,</p> <p>18 retailers, educators, librarians, and fans, CBLDF has</p> <p>19 participated in dozens of First Amendment cases in</p> <p>20 courts across the United States and led important</p> <p>21 educational initiatives promoting comics literacy and</p> <p>22 free expression."</p> <p>23 A. Uh-huh.</p> <p>24 Q. (As read): "The CBLDF has members located in</p> <p>25 Texas subject to the Book Ban."</p>

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<p style="text-align: right;">Page 30</p> <p>1 Did I read that correctly?</p> <p>2 A. You did indeed.</p> <p>3 Q. Does the entity Comic Book LDF sell books or</p> <p>4 library materials to Texas schools?</p> <p>5 A. It depends.</p> <p>6 The entity CBLDF? So you're not talking</p> <p>7 about members. You're talking about the entity,</p> <p>8 correct?</p> <p>9 Q. Correct.</p> <p>10 A. Great.</p> <p>11 And it depends on what you mean by selling</p> <p>12 books to public schools. There's a broad ambit, I</p> <p>13 think. My understanding is it's somewhat vague in the</p> <p>14 statute.</p> <p>15 So we sell books, and the Comic Book Legal</p> <p>16 Defense Fund sells books online, and it sells books at</p> <p>17 conventions. The number of educators, librarians,</p> <p>18 school administrators -- many of whom love comics and</p> <p>19 love our work -- purchase items from us at conventions.</p> <p>20 I assume that it's also the case online. But, again, we</p> <p>21 don't monitor people's professions when they buy from us</p> <p>22 online.</p> <p>23 So is it possible that we have sold books</p> <p>24 that have ended up in a Texas classroom? It is</p> <p>25 theoretically possible. That's obviously one of the</p>	<p style="text-align: right;">Page 32</p> <p>1 have access to those records. I reviewed as much as I</p> <p>2 could in preparation for the -- in discovery, and</p> <p>3 there's a lot of those records that don't even exist.</p> <p>4 So I can't tell you what purchase orders we</p> <p>5 might have received from schools for educational</p> <p>6 material. I simply can't. I wish I could but I can't.</p> <p>7 Q. Are you aware of any individual title that the</p> <p>8 entity Comic Book LDF has sold that is currently in a</p> <p>9 Texas school?</p> <p>10 A. Our particular items. I -- again, I didn't do</p> <p>11 an -- I didn't do an OCLC search. I didn't do a search</p> <p>12 of Texas -- the times I've looked at Texas, I'm not even</p> <p>13 aware that you have a uniform comprehensive library</p> <p>14 search tool. So, again, I can't -- I simply can't</p> <p>15 testify.</p> <p>16 It is entirely -- I know there are books of</p> <p>17 ours in schools across the country. I just don't know</p> <p>18 there because I can't do the search, and I don't have</p> <p>19 the records. So I am not willing to testify that there</p> <p>20 are none, and I am not willing to testify of certain</p> <p>21 knowledge that they are. It literally is of limitations</p> <p>22 of access to information.</p> <p>23 Q. My question was slightly different. I'm not</p> <p>24 asking if there's none.</p> <p>25 I'm asking: Are you aware of any that are</p>
<p style="text-align: right;">Page 31</p> <p>1 concerns in this case.</p> <p>2 So do we have -- does the Comic Book Legal</p> <p>3 Defense Fund have a formal set of requisition system set</p> <p>4 up? We are, you know, getting purchase orders from</p> <p>5 Texas schools. We do not.</p> <p>6 But -- sorry. I hope you understand the</p> <p>7 different context, and that's why I can't answer the</p> <p>8 question more precisely than that.</p> <p>9 Q. So if I understand your answer correctly,</p> <p>10 there's no formal process by which Comic Book LDF, the</p> <p>11 entity, directly sells to schools, but it is possible --</p> <p>12 (Simultaneous cross-talk ensues.)</p> <p>13 A. It could.</p> <p>14 Q. (BY MR. BERG) But it is possible --</p> <p>15 (Simultaneous cross-talk ensues.)</p> <p>16 Q. (BY MR. BERG) -- that you have sold books to</p> <p>17 individuals, and those books have wound up in Texas</p> <p>18 schools; is that correct?</p> <p>19 A. Again, I have no -- I've only been here</p> <p>20 through -- since 2020, and I don't handle the book</p> <p>21 aspect of it, so I don't know every sale that's been</p> <p>22 done.</p> <p>23 It's entirely possible, given the</p> <p>24 educational content of certain works that we sell, that</p> <p>25 there have been purchase orders in the past. I don't</p>	<p style="text-align: right;">Page 33</p> <p>1 currently in Texas schools?</p> <p>2 A. I've told you what I know, which is that I</p> <p>3 don't have knowledge, so...</p> <p>4 Q. Does the entity Comic Book LDF sell anything</p> <p>5 directly to the entity Texas Education Agency?</p> <p>6 A. Again, I have no knowledge of -- if Texas</p> <p>7 Education Agency reached out to us and did it, even</p> <p>8 despite this case, we would gladly sell them material.</p> <p>9 But to my knowledge, they haven't.</p> <p>10 Q. Do any of Comic Book LDF's members sell</p> <p>11 anything directly to the Texas Education Agency?</p> <p>12 A. Again, I don't -- I'm just not aware.</p> <p>13 MR. BERG: Can we go to the Declaration,</p> <p>14 which is Page 72 of the Complaint?</p> <p>15 THE TECHNICIAN: (Complies.)</p> <p>16 Q. (BY MR. BERG) Is this the Declaration you</p> <p>17 executed in this case?</p> <p>18 A. It appears to be. It appears --</p> <p>19 (Simultaneous cross-talk ensues.)</p> <p>20 A. It appears to be the Declaration. Obviously, I</p> <p>21 haven't read the whole thing, so...</p> <p>22 MR. BERG: Jeremy, can we go to the end of</p> <p>23 the Declaration?</p> <p>24 THE TECHNICIAN: (Complies.)</p> <p>25 MR. BERG: Thank you.</p>

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Pages 34 to 37

<p style="text-align: right;">Page 34</p> <p>1 Q. (BY MR. BERG) Does this show that you executed 2 this Declaration on July 24th, 2023? 3 A. It does indeed. 4 MR. BERG: Can we go to Paragraph 5 of the 5 Declaration, please? 6 THE TECHNICIAN: (Complies.) 7 Q. (BY MR. BERG) Paragraph 5 reads (as read): 8 "Comic artists, publishers, and retailers are all 9 subject to the requirements of House Bill 900, the Book 10 Ban." 11 Did I read that correctly? 12 A. Yes, you did. 13 Q. In what way are comic artists subject to the 14 requirements of HB 900? 15 A. Do you have HB 900 up? And so -- 16 MR. BERG: Could we bring HB 900 up, 17 please? 18 THE TECHNICIAN: (Complies.) 19 A. Thanks. 20 So, remind me, who's subject to -- take me 21 to -- when you're saying somebody is subject to the ban, 22 what's your understanding of who is subject to the HB 23 900? Who are the affected parties -- just so I know -- 24 is your understanding? 25 Q. (BY MR. BERG) Yes. I'm using the wording of</p>	<p style="text-align: right;">Page 36</p> <p>1 A. I mean, look -- yeah. Yes, they would. 2 Do you know how comics are -- well, I'll 3 let you ask because -- I'll let you ask your question. 4 Q. Do you know the anticipated cost to rate books 5 that comic artists, who are members of Comic Book LDF -- 6 A. Okay. 7 Q. -- that they will sell to Texas schools? 8 A. And, again, very broad question because there 9 are financial costs that are direct, and there are also 10 costs that are indirect. 11 And so I won't answer your question because 12 I am judging by the question and the tone in which 13 you're asking it, I suspect you don't fully understand 14 the nature of the contemporary comics market. 15 So -- unless you're asking for a particular 16 creator, okay. So a creator can get access to the 17 marketplace in a couple ways -- not two. Multiple ways. 18 There's many ways, not just two. 19 One would be -- which is probably what 20 you're thinking about -- which is somebody selling 21 material to an individual or an entity that then 22 publishes the work, which either the publisher either 23 sells directly or at least -- or markets directly, and 24 then there's a distributor. 25 There are also a number of creators who --</p>
<p style="text-align: right;">Page 35</p> <p>1 the Declaration -- 2 A. Uh-huh. 3 Q. -- which you said under oath was (as read): 4 "Comic artists, publishers, and retailers are all 5 subject to the requirements of House Bill 900" -- 6 A. Uh-huh. 7 Q. -- "the Book Ban." 8 A. Because they are. Because they all are -- you 9 can continue. Page through this, please. I just don't 10 like relying on memory. 11 MR. BERG: Jeremy, would you please page 12 through? 13 THE TECHNICIAN: (Complies.) 14 A. The law applies to vendors, and there's a broad 15 also definition of sale. Every person that I mention 16 there could arguably fall under the definition of 17 vendor, and they all engage in sales that could arguably 18 fall within the ambit of selling material that ends up 19 in a library or to a district. 20 Q. (BY MR. BERG) But your understanding is that 21 Comic Book LDF's member comic artist would fall under 22 the -- 23 A. Uh-huh. 24 Q. -- the vendor and seller's definition of HB 25 900.</p>	<p style="text-align: right;">Page 37</p> <p>1 what's called -- I'll refer to as "self-publishing" -- 2 sometimes independent but often self-publishing. And so 3 all of the production and sales and distribution is 4 something that they do themselves. So somebody who is 5 engaged in this, they have to think about if they're 6 going to have to hire a lawyer. They're going to have 7 to, you know, study these standards. There's going to 8 have to parse out these standards. 9 It's -- it's a lot of time. It's a lot of 10 money. There's a potential of lost sales if it's 11 branded a particular way. There's just a lot that's 12 going on here. 13 There are reputational issues if work is 14 branded a certain way. It could limit access to the 15 marketplaces. 16 There's a range of costs, direct and 17 indirect, that would affect a creator who is 18 self-publisher. There's a range of costs that would 19 affect a creator who is selling their work to a company 20 just because it affects the market for that creator's 21 work and the perception of how that material would be 22 rated if it were acquired. Just a lot of touch points 23 for costs. 24 It could even affect things like suppose 25 the creator has an office somewhere or has a store or</p>

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<p style="text-align: right;">Page 38</p> <p>1 the creator's work is sold. Many independent creators 2 work are sold in local comic shops. 3 Comic shops are often subject to leases 4 much like any other leases that have certain clauses 5 that could affect the viability of the lease based on 6 what's sold in that particular comic shop, which could 7 have costs both to the creator in terms of lost sales if 8 there's a misunderstanding of the nature of the work and 9 could also lead to consequences for the retailer 10 themselves which is, you know, a number of retailers in 11 Texas. 12 So there are a range of costs here, but a 13 lot of it comes down to definition and specifics. So 14 you're asking for a general thing, and there's a lot 15 here. 16 Q. I appreciate that background. 17 Are you aware of any Comic Book LDF member 18 who's performed the cost analysis of what it will cost 19 them to comply with HB 900? 20 A. I don't have a specific -- other than anybody 21 runs the numbers. A lot of these are -- so I don't know 22 that anybody's done specifics. I know that there are a 23 lot of people who are concerned that it would impact 24 their ability to sell their book either to a publisher 25 or have it marketplace on their own. We've handled, you</p>	<p style="text-align: right;">Page 40</p> <p>1 I don't recall if we mentioned that in the 2 material or not. Like I said, I haven't sat and reread 3 everything for this, but I can tell you that it has cost 4 us. Not something I'm quantifying, but I know from 5 conversations that it has. 6 Q. Has the entity Comic Book LDF performed any 7 financial analysis of the impact of HB 900? 8 A. No. 9 Again, we don't -- we don't -- you can look 10 at our testimony, and I would have to look at the 11 testimony. I'd be interested in this. But to my 12 knowledge, I'm trying to think of a case where we 13 calculated damages, and I just don't know. I would have 14 to go through our records to the extent that they are 15 extant. 16 Again, I just -- HB 900, no, I know haven't 17 -- I haven't run the numbers on that in terms of the 18 impact. I know there is an impact, and I know there's a 19 lot of concern; but I haven't run the specific number. 20 Q. Are you aware of any Comic Book LDF member who 21 has analyzed the time that it will take them to rate 22 books subject to HB 900? 23 A. A formal study of the time, no. A discussion 24 of what would be necessary in order to conform to it, 25 obviously, I've already answered that some of the things</p>
<p style="text-align: right;">Page 39</p> <p>1 know, any number of cases where direct -- directed at 2 certain books have impacted the market. It's -- but in 3 terms of, you know, kind of a -- an economic analysis or 4 the creator for the publisher for the industry, I don't 5 know that that's been done. I know that there are 6 specifics in terms of what people have experienced, but 7 I don't have that particular case study. 8 Q. Comic Book LDF, the entity, are you alleging 9 that you were financially injured by HB 900? 10 A. Well, I think there are two -- two types -- two 11 levels of injury. We are the voice of the comics 12 community and particular of our members but also the 13 broader comics community. Many people support us and 14 interact with us. 15 Q. But in this case, I'm asking particular about 16 financial injury. 17 A. You know, I mean, we've had people who have 18 told us, you know, they're concerned about -- that they 19 support our work, but they can't do it publicly because 20 of, like, people in Texas -- and I'm talking 21 specifically of Texas -- because of allegations like the 22 allegations that have made -- false allegations that 23 have been made by people advocating for HB 900 or 24 challenging certain books. So it's cost us, you know, 25 memberships, and that's a financial impact.</p>	<p style="text-align: right;">Page 41</p> <p>1 that would have to be done in order to comply with it, 2 and the costs that would have to be incurred. I'm just 3 not aware of a study. 4 Q. Has the entity Comic Book LDF conducted any 5 study of the time that it would take to comply with HB 6 900? 7 A. I haven't conducted a study. 8 Q. What materials does the entity Comic Book LDF 9 sell that would be regulated by HB 900? 10 MR. LAMBERT: Objection, form. 11 A. Part of the problem here for me just is -- in 12 terms of understanding the bill -- and as I recall, this 13 is a part of the complaint -- is that we're not sure the 14 scope of this legislation is -- it's rather vague. 15 Q. (BY MR. BERG) When you say "the scope," could 16 you expand a little on that? 17 A. Yeah, sure. 18 You have certain definitions, 43.25. 19 There's also -- I think there's a -- I'm looking at it 20 right here. There's another one on another page. I 21 think it ends dot two one. 22 There are various definitions of what's 23 depicting sexual content, sexual conduct. There's a 24 standard that gets into -- yeah, 33021. There's a 25 standard that gets into a patently offensive standard.</p>

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<p style="text-align: right;">Page 42</p> <p>1 Then you question what is patently offensive and how</p> <p>2 that's defined. What's encompassed by these?</p> <p>3 Again, I -- in the work that I do, if you</p> <p>4 look at those definitions and you see things like sexual</p> <p>5 contact, you know, there are people out there who</p> <p>6 believe a kiss or holding hands or dancing -- depending</p> <p>7 on how it's done -- would qualify as that, and depiction</p> <p>8 should be banned from all schools. It really is vague.</p> <p>9 You know, you talk about sexual intercourse</p> <p>10 in one minute; and, yet, you are not enforcing this law,</p> <p>11 and you're not having to make decisions under this law</p> <p>12 in terms of what you will sell or what you will publish</p> <p>13 or what you will distribute. It's much broader than</p> <p>14 anything you've said so far in this -- in this case --</p> <p>15 in this deposition, I mean.</p> <p>16 Q. When you use the word "you," to what entity are</p> <p>17 you referring?</p> <p>18 A. Zachary Berg.</p> <p>19 Q. You said that there were people who were</p> <p>20 concerned that definition of sexual conduct could</p> <p>21 include kissing, holding hands, or dancing; is that</p> <p>22 correct?</p> <p>23 A. Yeah, yeah.</p> <p>24 Q. Who has expressed this viewpoint?</p> <p>25 A. Retailers; creators; myself, as somebody who is</p>	<p style="text-align: right;">Page 44</p> <p>1 "Despite their accolades and obvious literary merit, all</p> <p>2 of the award-winning works listed above would likely be</p> <p>3 subject to restriction or removal under the definition</p> <p>4 of sexually relevant and sexually explicit contained in</p> <p>5 the Book Ban."</p> <p>6 Did I read that correctly?</p> <p>7 A. Yep.</p> <p>8 MR. BERG: And could we zoom out and zoom</p> <p>9 in on Paragraph 4?</p> <p>10 THE TECHNICIAN: (Complies.)</p> <p>11 Q. (BY MR. BERG) And are these the books that in</p> <p>12 Paragraph 6 you say would likely be subject to</p> <p>13 restriction or removal under the definitions of sexually</p> <p>14 relevant and sexually explicit?</p> <p>15 A. They are all examples of books, yes.</p> <p>16 Q. When you say that "they would likely be subject</p> <p>17 to restriction or removal," what do you mean?</p> <p>18 A. These are all examples of books that have been</p> <p>19 either -- these are all examples of books where people</p> <p>20 applying the same sort of concept that you have there</p> <p>21 where they think of something sexually explicit have all</p> <p>22 been challenged or removed. So it's happened before,</p> <p>23 and including, you know, a number of, if not all of them</p> <p>24 in the state of Texas, prior to HB 900, and so we these</p> <p>25 are ones where they would likely happen again.</p>
<p style="text-align: right;">Page 43</p> <p>1 the history of -- understands the history of this sort</p> <p>2 of legislation and has had cases and matters around the</p> <p>3 country where people are making allegations.</p> <p>4 You know, there's a wide -- sexual content</p> <p>5 is susceptible to a wide range of definitions. And, you</p> <p>6 know, I can go into the history, if you like, but it</p> <p>7 is --</p> <p>8 Q. That's okay. Let's -- sorry.</p> <p>9 MR. BERG: We can take that off. Let's go</p> <p>10 back to the Declaration.</p> <p>11 A. Uh-huh.</p> <p>12 MR. BERG: Can you bring that back up,</p> <p>13 Jeremy, please? Paragraph 6.</p> <p>14 THE TECHNICIAN: (Complies.)</p> <p>15 A. I'm sorry. Am I now testifying on behalf of</p> <p>16 the Authors Guild?</p> <p>17 MR. BERG: I think we're on the wrong page.</p> <p>18 Can we go to -- it's going to be Page 73 of</p> <p>19 the PDF of the Complaint.</p> <p>20 THE TECHNICIAN: (Complies.)</p> <p>21 MR. BERG: Thank you.</p> <p>22 Can you zoom in on Paragraph 6, please?</p> <p>23 THE TECHNICIAN: (Complies.)</p> <p>24 A. Uh-huh.</p> <p>25 Q. (BY MR. BERG) Paragraph 6 states (as read):</p>	<p style="text-align: right;">Page 45</p> <p>1 (Simultaneous cross-talk ensues.)</p> <p>2 A. Because my understanding of HB 900 is that it</p> <p>3 wasn't designed to curb Book Bans. It was actually</p> <p>4 designed to kind of expand them.</p> <p>5 MR. BERG: Can we go back to Paragraph 6?</p> <p>6 THE TECHNICIAN: (Complies.)</p> <p>7 Q. (BY MR. BERG) So when you say that these works</p> <p>8 would likely be subject to restriction or removal --</p> <p>9 A. Uh-huh.</p> <p>10 Q. -- is that based on your understanding of</p> <p>11 pre-HB 900 removal of these books or specific language</p> <p>12 in HB 900 itself?</p> <p>13 A. Both.</p> <p>14 It has to do with books that have been</p> <p>15 challenged in Texas and beyond for rational similar to</p> <p>16 rationales used for adopting HB 900. It's based on how</p> <p>17 librarians and others have reacted to the enactment of</p> <p>18 legislation similar to HB 900, whether the criminal</p> <p>19 legislation, or restrictions what schools can do, or the</p> <p>20 imposition of ratings, which there is a long history in</p> <p>21 the comics community going back decades.</p> <p>22 There are certain behaviors. There are</p> <p>23 certain ways people respond when they have this type of</p> <p>24 legislation or where they have these kind of ratings.</p> <p>25 And all -- and since all of the books have been</p>

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<p style="text-align: right;">Page 46</p> <p>1 challenged repeatedly in recent years, particularly</p> <p>2 since the surge in 2020, 2021, it is quite likely that</p> <p>3 all of these books will be the subject of some sort of</p> <p>4 challenge or restriction under HB 900.</p> <p>5 Q. Would you agree with me that the books</p> <p>6 challenged in 2021 were not challenged under HB 900</p> <p>7 considering it did not yet exist?</p> <p>8 A. Oh, I was wondering what the nature of the</p> <p>9 question was.</p> <p>10 So it is -- when HB 900 did not exist,</p> <p>11 there were no books that were challenged under HB 900.</p> <p>12 Q. In Paragraph 7, at the start, you say (as</p> <p>13 read): "Determining where books may fall in line of</p> <p>14 these vague categories is not at all clear."</p> <p>15 How is -- how are the categories not clear</p> <p>16 if in Paragraph 6 you were able to say that they -- the</p> <p>17 books will likely be subject to restriction or removal</p> <p>18 under HB 900?</p> <p>19 A. These are not the only books that we're talking</p> <p>20 about. My understanding and -- of the text here is not</p> <p>21 that we're saying these are the only books that we'd be</p> <p>22 restricted, but that there are a lot of books that are</p> <p>23 likely to be restricted.</p> <p>24 So there's a lot of that goes into making</p> <p>25 these assessments. It's even with respect to the</p>	<p style="text-align: right;">Page 48</p> <p>1 is it isn't even clear what correct is.</p> <p>2 You know, if I have -- if I have somebody</p> <p>3 who says that any -- any depiction of anything, you</p> <p>4 know, it can range from a kiss to whatever -- that any</p> <p>5 depiction for anything under the age of 18 or under the</p> <p>6 age of 17 is restricted sexual content, then you're</p> <p>7 getting rid of a lot of books. It's just unclear what</p> <p>8 this -- what this means.</p> <p>9 Q. Are you aware if anyone's who has done that?</p> <p>10 A. I am aware --</p> <p>11 THE WITNESS: I'm sorry. Michael, did you</p> <p>12 want say something? I didn't mean to jump in too</p> <p>13 quickly. I thought I heard something in the background.</p> <p>14 MR. LAMBERT: No, no. Thank you, Jeff.</p> <p>15 THE WITNESS: Uh-huh.</p> <p>16 A. I am aware of people who made some very</p> <p>17 broad -- very broad characterizations of works, yeah.</p> <p>18 Q. (BY MR. BERG) Have they done so under HB 900?</p> <p>19 A. I am aware of people who have done so in Texas.</p> <p>20 I am aware of people who have done so nationwide.</p> <p>21 I'd have to go back under sort of the past</p> <p>22 -- excuse me -- I'd have to go back under challenges to</p> <p>23 specific challenges of Texas since HB number -- HB 900</p> <p>24 was enacted to see if we're specifically citing this</p> <p>25 statute. You know, this statute has been subject to a</p>
<p style="text-align: right;">Page 47</p> <p>1 assessments here. Even the named books, there are --</p> <p>2 you can go through each, book and you can go, well,</p> <p>3 maybe this wouldn't fall under HB 900. But given the</p> <p>4 fact that HB 900 exists and the state can</p> <p>5 re-characterize it and these particular titles, it</p> <p>6 categories sexually explicit, sexually relevant,</p> <p>7 redefines the whole work as sexual in some way when it</p> <p>8 may be just one image in an entire book. It is all very</p> <p>9 vague and uncertain that they -- it's not even -- it's</p> <p>10 not even from my perspective.</p> <p>11 When I say that they'll be likely to</p> <p>12 restriction or removal, I'm not saying that restriction</p> <p>13 or removal is valid or that they should be. What I'm</p> <p>14 saying is that people take a look at the statute and</p> <p>15 say, oh, to be safe, we need to get rid of these. Even</p> <p>16 if they technically -- I would argue -- shouldn't be</p> <p>17 covered by this particular rule. It really is that</p> <p>18 vagueness that's the problem or a big part of the</p> <p>19 problem.</p> <p>20 Q. So you're including in your projected books</p> <p>21 that would be removed, books that would be removed</p> <p>22 through an incorrect application of HB 900; is that</p> <p>23 correct?</p> <p>24 A. An overbroad. You're using the word</p> <p>25 "incorrect." There's no -- the problem with the statute</p>	<p style="text-align: right;">Page 49</p> <p>1 lot of litigation of which we're a part, so...</p> <p>2 Q. As we sit here, are you aware of any of this</p> <p>3 being done under HB 900?</p> <p>4 A. As we sit here, I would need to go back and</p> <p>5 just take a look at the cases because I just don't have</p> <p>6 that data in hand.</p> <p>7 Q. So you couldn't say one way or the other?</p> <p>8 A. I couldn't say one way or another.</p> <p>9 MR. BERG: Could we zoom in on Page 7?</p> <p>10 It's bottom of Page 2 of the Declaration and the top of</p> <p>11 Page 3 of the Declaration.</p> <p>12 THE TECHNICIAN: (Complies.)</p> <p>13 A. Actually, before you ask that question, could I</p> <p>14 take a brief pause?</p> <p>15 Q. (BY MR. BERG) Yeah.</p> <p>16 Would you like to take a ten-minute --</p> <p>17 (Simultaneous cross-talk ensues.)</p> <p>18 A. I'm not asking the counselor anything, so...</p> <p>19 Q. (BY MR. BERG) Yeah. Let's take a ten-minute</p> <p>20 break.</p> <p>21 A. Great. Thanks.</p> <p>22 MR. BERG: Let's go off the record.</p> <p>23 THE VIDEOGRAPHER: Going off the record.</p> <p>24 The time is 10:11 a.m. Central.</p> <p>25 (A break was taken from 10:11 a.m. to</p>

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<p style="text-align: right;">Page 50</p> <p>1 10:23 a.m.)</p> <p>2 THE VIDEOGRAPHER: We are back on the</p> <p>3 record. The time is 10:23 a.m. Central.</p> <p>4 Please proceed.</p> <p>5 MR. BERG: Would you please zoom in on</p> <p>6 paragraph -- part of Paragraph 7 that appears on this</p> <p>7 page as well as the part that appears on the next page?</p> <p>8 THE TECHNICIAN: (Complies.)</p> <p>9 MR. BERG: Jeremy, could we also see the</p> <p>10 part on the second page -- or the page after this?</p> <p>11 THE TECHNICIAN: (Complies.)</p> <p>12 MR. BERG: Would you be able to display</p> <p>13 both parts of Paragraph 7 of the same side, please?</p> <p>14 THE TECHNICIAN: Yes, sir. Working on that</p> <p>15 now. My apologies.</p> <p>16 A. Okay.</p> <p>17 Q. (BY MR. BERG) Mr. Trexler --</p> <p>18 A. Uh-huh.</p> <p>19 Q. -- in Paragraph 7 where it stays {sic} (as</p> <p>20 read): "Determining where books may fall in light of</p> <p>21 these vague categories is not at all clear especially in</p> <p>22 light of recent mischaracterizations of certain graphic</p> <p>23 novels as obscene, pornographic, or otherwise harmful to</p> <p>24 minors despite the book's demonstrable and widely</p> <p>25 recognized artistic, meritorious, or and serious value</p>	<p style="text-align: right;">Page 52</p> <p>1 A. Uh-huh.</p> <p>2 Q. -- "and the pillar of Holocaust studies, but it</p> <p>3 contains a single image of a partially nude woman.</p> <p>4 Under the Book Ban, that would appear to be enough to</p> <p>5 qualify as sexually-relevant material subject to</p> <p>6 restriction and parental approval."</p> <p>7 Did I read that correctly?</p> <p>8 A. You did indeed.</p> <p>9 Q. Was this determination by you the result of</p> <p>10 your analysis of the definition of sexually relevant in</p> <p>11 the statute?</p> <p>12 A. Both. Analysis of sexually relevant and also</p> <p>13 prior experience.</p> <p>14 Q. Do you think that "Maus," through the single</p> <p>15 image of a partially nude woman, would qualify as</p> <p>16 sexually-relevant material under the statute alone?</p> <p>17 A. You're asking for my opinion?</p> <p>18 Q. I am.</p> <p>19 A. I'm not going to -- the reason is, again, this</p> <p>20 is very vague. So let me --</p> <p>21 (Simultaneous cross-talk ensues.)</p> <p>22 Q. (BY MR. BERG) Would you like to see the</p> <p>23 language of the statute?</p> <p>24 A. See the language of the statute again.</p> <p>25 MR. BERG: Could we go -- Paragraph --</p>
<p style="text-align: right;">Page 51</p> <p>1 for minors."</p> <p>2 Did I read that correctly?</p> <p>3 A. The words are "mischaracterizations" and</p> <p>4 "demonstrable." But other than that, yes.</p> <p>5 Q. Thank you for fact-checking.</p> <p>6 The recent mischaracterizations of certain</p> <p>7 graphic novels, was that done by the Texas Education</p> <p>8 Agency or by others?</p> <p>9 A. Don't recall with respect to Texas Education</p> <p>10 Agency. I do know it was definitely -- I know that</p> <p>11 others were in mind when writing this.</p> <p>12 MR. BERG: Let's go to Paragraph 8 --</p> <p>13 A. Uh-huh.</p> <p>14 MR. BERG: -- please.</p> <p>15 THE TECHNICIAN: (Complies.)</p> <p>16 Q. (BY MR. BERG) In Paragraph 8, you talk</p> <p>17 about -- it's pronounced "Maus"?</p> <p>18 A. "Maus" (pronunciation).</p> <p>19 Q. "Maus."</p> <p>20 A. Yeah. It's German.</p> <p>21 Q. Not my best language.</p> <p>22 A. That's all right. You're forgiven.</p> <p>23 Q. Paragraph 8 reads (as read): "Maus," for</p> <p>24 instance, is one of the most respected graphic works of</p> <p>25 our generation" --</p>	<p style="text-align: right;">Page 53</p> <p>1 sorry -- Page 30 of the Complaint.</p> <p>2 THE TECHNICIAN: (Complies.)</p> <p>3 Q. (BY MR. BERG) And --</p> <p>4 A. Can you pull up Section 43.25 of the Penal</p> <p>5 Code, please?</p> <p>6 MR. BERG: Can you -- yes, can you, please,</p> <p>7 pull up Texas Penal Code Title 9 document?</p> <p>8 THE TECHNICIAN: (Complies.)</p> <p>9 MR. BERG: We'll mark this as Exhibit D.</p> <p>10 Would you please go to Page 13 of this</p> <p>11 document to Section 43.25(2)?</p> <p>12 THE TECHNICIAN: (Complies.)</p> <p>13 MR. BERG: Would you highlight 43.25(2),</p> <p>14 "Sexual conduct means."</p> <p>15 THE TECHNICIAN: (Complies.)</p> <p>16 (Exhibit D marked.)</p> <p>17 Q. (BY MR. BERG) Mr. Trexler, are you able to</p> <p>18 read 43.25(2), or would you like zoom in?</p> <p>19 (Simultaneous cross-talk ensues.)</p> <p>20 A. I'm fine to read it, yeah.</p> <p>21 And in particular -- (as read): "Assuming</p> <p>22 sexual contact, factual or simulated intercourse</p> <p>23 (descriptive noise), or lewd exposition of the genitals,</p> <p>24 the anus, or any portion of the female breasts below the</p> <p>25 top of areola."</p>

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<p style="text-align: right;">Page 54</p> <p>1 All right. So give you the example of</p> <p>2 "Maus" where we have a situation where the author's</p> <p>3 mother has committed suicide and is nude in a tub. That</p> <p>4 has been seen as falling under -- people who see that</p> <p>5 image and they see that for children. What's</p> <p>6 interesting is that the objections that I've seen are</p> <p>7 not about the fact that it's a suicide, but it's the</p> <p>8 fact that the woman is nude and that the portion of the</p> <p>9 breasts and others are indeed visible. And they view</p> <p>10 that as something in the context of child -- children's</p> <p>11 education -- and by children, you're talking anybody</p> <p>12 high school on down -- is seen as -- when you're dealing</p> <p>13 with kids, that that's implicitly lewd; that kids see</p> <p>14 things as lewd.</p> <p>15 I disagree, but there are people who</p> <p>16 interpret it that way.</p> <p>17 Q. (BY MR. BERG) Are you aware of any guidance</p> <p>18 from TEA that defines lewd, or how it would be used in</p> <p>19 the statute?</p> <p>20 A. I would have to go back and see TA {sic}</p> <p>21 guidance.</p> <p>22 I know that I've read some material by TA,</p> <p>23 but -- in conjunction with this complaint, but it's been</p> <p>24 a while.</p> <p>25 MR. BERG: Could we, please, go back to the</p>	<p style="text-align: right;">Page 56</p> <p>1 legal analysis of how I would interpret this law if I</p> <p>2 were in the Texas Education Authority, which I am -- or</p> <p>3 Agency, which I am not.</p> <p>4 Q. So your concern is that either the seller of</p> <p>5 the book or TEA, the two entities that would rate the</p> <p>6 book, might consider that lewd; is that correct?</p> <p>7 A. One of my concerns is -- yes, they would.</p> <p>8 One of my concerns is that somebody would</p> <p>9 bring a complaint, somebody making it -- giving advice</p> <p>10 to a school district; that somebody -- somebody would</p> <p>11 look at that and consider that lewd, and that's a not</p> <p>12 a -- that is a reasonable assumption given what other</p> <p>13 people have said in the past.</p> <p>14 Q. You would agree with me that under HB 900</p> <p>15 school districts would not be rating books, though,</p> <p>16 correct?</p> <p>17 A. Everybody has to make these decisions, and they</p> <p>18 have to be concerned about what's in their library. The</p> <p>19 vendors have to be concerned about how they rate these</p> <p>20 things. They have to make an analysis of how they view</p> <p>21 the people in the TEA. And how anything from reasonable</p> <p>22 to accurate, they would be in characterizing certain</p> <p>23 works.</p> <p>24 Let's just say the track record isn't good</p> <p>25 in terms of seeing that -- assuming that everybody who</p>
<p style="text-align: right;">Page 55</p> <p>1 Declaration, Paragraph 8?</p> <p>2 THE TECHNICIAN: (Complies.)</p> <p>3 Q. (BY MR. BERG) While we're waiting for that,</p> <p>4 would you agree that kissing, holding hands, or dancing</p> <p>5 would not qualify under sexual conduct as described in</p> <p>6 Section 43.25(2)?</p> <p>7 A. Again, I'm seeing -- I'm thinking about the</p> <p>8 laws applied and how people would look at a particular</p> <p>9 image and see what sort of contact they see in the</p> <p>10 picture, what sort of touching they see in the picture.</p> <p>11 Again, I -- it really is going to depend on the image</p> <p>12 and how people respond to it and how people do a risk</p> <p>13 analysis based on how certain passages are described.</p> <p>14 You know, we're dealing with a situation</p> <p>15 I'm regularly encountering people who mischaracterize</p> <p>16 what's going on in certain works and say there are</p> <p>17 certain things and works that literally are not there,</p> <p>18 and that has led to books of all stripes being withdrawn</p> <p>19 from schools, or, at least concern, about why the books</p> <p>20 -- certain books should even be sold to schools. So you</p> <p>21 have distributors withholding certain books because of</p> <p>22 the fear it could be -- I would see it as misread in</p> <p>23 certain ways.</p> <p>24 So I am not -- my understanding is -- and</p> <p>25 please, you know, let me know -- that I am not giving a</p>	<p style="text-align: right;">Page 57</p> <p>1 analyzes a work is going to be doing so either in good</p> <p>2 faith or with an understanding of what's immaterial. I</p> <p>3 mean, I've seen law enforcement officers describe</p> <p>4 material in books that is not there because they've</p> <p>5 never read the books, and that makes people -- that</p> <p>6 leads people to make decisions; or they misinterpret</p> <p>7 what's there; or they misinterpret the statute; or they</p> <p>8 read the statute as broader than -- as having a breadth</p> <p>9 that goes beyond what -- the way you're characterizing</p> <p>10 the statute.</p> <p>11 Those words contain multitudes that you're</p> <p>12 talking about there. There's a number of</p> <p>13 interpretations in these words that can take them in</p> <p>14 lots of different directions. They're not as bounded as</p> <p>15 you think, and...</p> <p>16 Q. Would you agree with me that regardless of how</p> <p>17 the booksellers and TEA rate books, school districts can</p> <p>18 and may still remove books?</p> <p>19 A. That there is school challenges that can go on</p> <p>20 outside of the HB 900 context?</p> <p>21 Q. Yes.</p> <p>22 A. I would have to -- I've been focusing on the</p> <p>23 ratings here. I understand there are other elements to</p> <p>24 HB 900. So I need to -- I would need to go back and</p> <p>25 read the scope of the applicability to HB 900 to school</p>

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<p style="text-align: right;">Page 58</p> <p>1 board policies and the extent to which HB 900 is</p> <p>2 preemptive. I just -- that's not something that I</p> <p>3 recall because my understanding is that we were focusing</p> <p>4 on the sexually explicit and sexually relevant.</p> <p>5 Q. Would you agree --</p> <p>6 (Simultaneous cross-talk ensues.)</p> <p>7 A. Rubric for challenges in Texas.</p> <p>8 Q. (BY MR. BERG) Sorry. I thought you were</p> <p>9 finished.</p> <p>10 Would you agree that schools were removing</p> <p>11 books for sexual content prior to HB 900?</p> <p>12 A. Schools were removing books, yeah, from the</p> <p>13 very reactions to the challenges prior to HB 900.</p> <p>14 MR. BERG: Let's go back to Paragraph 8.</p> <p>15 THE TECHNICIAN: (Complies.)</p> <p>16 Q. (BY MR. BERG) It continues (as read): "That</p> <p>17 single image could also lead to a total ban --</p> <p>18 A. Uh-huh.</p> <p>19 Q. -- "depending on who is performing the</p> <p>20 multilayered contextual analysis required by the Book</p> <p>21 Ban."</p> <p>22 In that sense, are you saying that you</p> <p>23 think that it could qualify for sexually relevant, but</p> <p>24 depending on interpretation, it could also qualify as</p> <p>25 sexually explicit?</p>	<p style="text-align: right;">Page 60</p> <p>1 be categorized as sexually explicit?</p> <p>2 (Simultaneous cross-talk ensues.)</p> <p>3 Q. (BY MR. BERG) Is there any part that concerns</p> <p>4 you?</p> <p>5 A. I've already discussed 43.25, and I always --</p> <p>6 already discussed the variability and understanding in</p> <p>7 communities is what's patently offensive under 43.21, so</p> <p>8 I do believe I've answered that question.</p> <p>9 Q. Is -- so your concerns to summarize is the --</p> <p>10 the lewd in the definition under Section 43.25, and then</p> <p>11 do you have a concern also for the --</p> <p>12 A. Uh-huh.</p> <p>13 Q. -- patently offensive?</p> <p>14 A. Yeah.</p> <p>15 And we can -- so -- and, again, this is not</p> <p>16 my personal understanding of this. But part of what</p> <p>17 this does is it de-contextualizes images. And, also, in</p> <p>18 the vagueness of breadth of this particular statute,</p> <p>19 there's a lot of leeway for somebody to look at</p> <p>20 something and draw some conclusions about how this image</p> <p>21 is portrayed -- is perceived by a child. Now, again, I</p> <p>22 don't think this is good child psychology. I don't</p> <p>23 think it's good child psychiatry. I don't think it's</p> <p>24 good understanding of the young mind.</p> <p>25 But, for example, I've encountered people,</p>
<p style="text-align: right;">Page 59</p> <p>1 A. And, again, we have to define what you're</p> <p>2 saying in terms of what I'm saying that it could</p> <p>3 qualify. Am I saying that I would make that assessment?</p> <p>4 No. Would I argue against that assessment? Yes. Are</p> <p>5 there people who would look at the language and say that</p> <p>6 that language will support? They're making that</p> <p>7 assessment. There are people who would do that, yes.</p> <p>8 MR. BERG: Let's go to Page 30 of the</p> <p>9 Complaint again.</p> <p>10 THE TECHNICIAN: (Complies.)</p> <p>11 MR. BERG: Can you zoom in on</p> <p>12 Section 33.012, "Sexually explicit material"?</p> <p>13 THE TECHNICIAN: (Complies.)</p> <p>14 Q. (BY MR. BERG) So Section 33.012 says that (as</p> <p>15 read): "Sexually explicit material means any material</p> <p>16 that -- and then it just says (as read): "Describes,</p> <p>17 depicts, or portrays sexual conduct as defined by</p> <p>18 Section 43.25 of the Penal Code in a way that is</p> <p>19 patently offensive as defined by Section 43.21 of the</p> <p>20 Penal Code."</p> <p>21 A. Uh-huh.</p> <p>22 Q. Did I read that correctly?</p> <p>23 A. Uh-huh.</p> <p>24 Q. What part of that definition concerns you that</p> <p>25 the partially nude woman in "Maus" would be -- or could</p>	<p style="text-align: right;">Page 61</p> <p>1 including attorneys, who have argued, drawing on bad</p> <p>2 psychology from the 1940s and 1950s and the previous</p> <p>3 comic book scare that led to the enactment of the Comics</p> <p>4 Code, an earlier rating system, that say that the young</p> <p>5 mind is incapable of seeing nudity, particularly the</p> <p>6 adolescent mind is incapable of seeing nudity without</p> <p>7 having -- seeing it in a lewd context; that any</p> <p>8 portrayal of -- any depiction of nudity, particularly in</p> <p>9 an as opposed to text, which some people see as uniquely</p> <p>10 dangerous -- any depiction of nudity is -- is corrosive</p> <p>11 of the way youth develop sexually, develop socially.</p> <p>12 And that in this context, patently</p> <p>13 offensive should be considered by the local community,</p> <p>14 and it is irregardless of any literary, artistic,</p> <p>15 political, or scientific value, which is, you know,</p> <p>16 strict from consideration, so it is most narrowly</p> <p>17 defined here.</p> <p>18 So on the basis of single image and the</p> <p>19 assumption incorrect, I believe psychologically that</p> <p>20 this is what the association that's made that any image</p> <p>21 of nudity is going to be seen as lewd by anybody under</p> <p>22 the age of 18 and is going to harm them -- harm their</p> <p>23 mental health.</p> <p>24 That there are people -- if you had</p> <p>25 somebody like that -- if you had a lawyer like that or</p>

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<p style="text-align: right;">Page 62</p> <p>1 an educator like that or a principal or a superintendent</p> <p>2 like that -- and these are all people that I have</p> <p>3 encountered in real life -- in the Texas Education</p> <p>4 Agency involved in ratings, they would be exactly the</p> <p>5 sort of person who would put that book in this category.</p> <p>6 Q. Would -- in your opinion, would that be a</p> <p>7 correct determination and rating under HB 900?</p> <p>8 A. I'll repeat what I said earlier. It depends</p> <p>9 what you mean by correct. I would not do it.</p> <p>10 Is the text susceptible of being applied in</p> <p>11 that way? The text is being susceptible of being</p> <p>12 applied in that way. I mean, this text, frankly, is</p> <p>13 being susceptible sexually explicit depending on the</p> <p>14 nature of what's related in the -- what's in the Texas</p> <p>15 curriculum. This same image could be used to classify</p> <p>16 as sexual -- sexually explicit a book with a painting</p> <p>17 from the Garden of Eden scene in the Sistine Chapel and</p> <p>18 certain works of Picasso because, you know, Picasso's</p> <p>19 paintings of women masturbating, and the Sistine Chapel</p> <p>20 has some very sexually suggestive scenes in them that</p> <p>21 are widely recognized as stuff as such by decades of</p> <p>22 literature written by art historians.</p> <p>23 So this passage here is capable of</p> <p>24 encompassing a wide amount of material. I don't think</p> <p>25 it should, but, you know, I'm living in a landscape now</p>	<p style="text-align: right;">Page 64</p> <p>1 we're discussing, I would like to see it.</p> <p>2 Q. Yeah.</p> <p>3 MR. BERG: Can we put up the Penal Code,</p> <p>4 Exhibit D, please?</p> <p>5 THE TECHNICIAN: (Complies.)</p> <p>6 MR. BERG: Can we go to Page 9, please?</p> <p>7 THE TECHNICIAN: (Complies.)</p> <p>8 MR. BERG: And go to the bottom No. 4,</p> <p>9 "Patently offensive."</p> <p>10 THE TECHNICIAN: (Complies.)</p> <p>11 MR. BERG: Thank you.</p> <p>12 A. Actually, that -- no, it doesn't allay my</p> <p>13 fears. Standards of decency and community standards --</p> <p>14 it's not just that there are lots of different</p> <p>15 communities, which is a very hard decision for if you</p> <p>16 were a vendor or their publisher or self-publisher,</p> <p>17 distributor, somebody like this us, sales, that could</p> <p>18 end up going to a public school, say, to a convention or</p> <p>19 somebody ordering off our site -- you're going to be</p> <p>20 controlled selling books to the state of Texas by sort</p> <p>21 of the most offensive -- the most offended person's</p> <p>22 standard here, and there are people who are offended by</p> <p>23 a lot of stuff. It's hard to determine.</p> <p>24 See, if you look behind me, you see my</p> <p>25 library. You see multicolored books. Those books are</p>
<p style="text-align: right;">Page 63</p> <p>1 where somebody in Texas -- if they are a principal,</p> <p>2 superintendent, educator, administrator, bureaucrat,</p> <p>3 lawyer, a person who just figures themselves an amateur</p> <p>4 literary analyst or amateur -- analyst -- I could see</p> <p>5 them making that justification.</p> <p>6 So the word "correct" here doesn't really</p> <p>7 -- I think what you're trying to do is get me to say</p> <p>8 there's a right way to interpret this and a wrong way to</p> <p>9 interpret this, and it's not enough to say that people</p> <p>10 will interpret it incorrectly. What I'm saying is his</p> <p>11 language is so vague and overbroad that it can be</p> <p>12 applied in any number of different ways -- a number of</p> <p>13 which, I think, should not be permitted, and a number,</p> <p>14 which, I believe, are unconstitutional.</p> <p>15 Q. The patently offensive language, which without</p> <p>16 going Penal Code, I'll represent to you means so</p> <p>17 offensive on its face as to affront current community</p> <p>18 standards of decency.</p> <p>19 Does that standard -- current community</p> <p>20 standards allay any of your concerns?</p> <p>21 A. No.</p> <p>22 Q. Why not?</p> <p>23 A. Again, you won't put 43.21 up for me.</p> <p>24 Q. Would you like me to? I can.</p> <p>25 A. I've asked. Wherever there's a statute that</p>	<p style="text-align: right;">Page 65</p> <p>1 the complete reprinting of "EC Comics."</p> <p>2 "EC Comics" is from the 1950s. You may</p> <p>3 probably hear the title "Tales from the Crypt," "Vault</p> <p>4 of Horror." They were -- they're know recognized as</p> <p>5 literary classics that reshaped the 20th and 21st</p> <p>6 century entertainment and even literature. Stephen King</p> <p>7 was heavily influenced by those. A lot of people in</p> <p>8 film have been heavily influenced by them as well as in</p> <p>9 literature beyond just pure horror -- a lot of science</p> <p>10 fiction. They published the works of Ray Bradbury.</p> <p>11 In 1954, there were U.S. Senate hearings,</p> <p>12 and they turned on what is decent, and the very -- you</p> <p>13 know, we would now laugh at it honestly because it was</p> <p>14 so ridiculous the way they understood decency, but they</p> <p>15 were so strident -- the politicians -- one of whom was</p> <p>16 running -- going to run for president -- of terms of</p> <p>17 things being indecent that they were going to -- a</p> <p>18 number of states had actually passed laws against</p> <p>19 comics, and the United States Government was going to</p> <p>20 pass an unconstitutional law against comics because it</p> <p>21 offended a standard of decency. Even though, there's no</p> <p>22 -- you know, nothing in it that we would now consider</p> <p>23 problematic although many people would given this rule.</p> <p>24 And so the only way they could get this</p> <p>25 Congress off their backs and the States off their backs</p>

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<p style="text-align: right;">Page 66</p> <p>1 was to enact a Comics Code, which applied standards of 2 decency, which took all of these books that are behind 3 me off the marketplace. The public tried to shut down 4 -- except for one magazine, 5 "MAD" magazine that ended up reshaping 20th to 21st 6 century humor. 7 So when I see a reference to current 8 community standards of decency, I see the biggest land 9 mine in the world. I see a standard that has been -- 10 it's so broad particularly that we're -- as to have been 11 applied inconsistently across a state, across a country. 12 I see a standard that is implied to knock out works that 13 have long since become understood to be literature. 14 There are a number of novels that we now consider to be 15 classics that were knocked out or attempted to get out 16 of bookstores or movies that we now consider to be 17 classics that were considered to be offensive standards 18 of decency that were regularly censored by censorship 19 boards in New York and beyond that are now considered to 20 be classics on the criterion collection, DVD, and online 21 streaming. 22 This patently offensive is a patently 23 offensive standard to me -- when it's applied without 24 any reference to literary, artistic, political, or 25 scientific value. So, no, I'm not assured by the</p>	<p style="text-align: right;">Page 68</p> <p>1 MR. BERG: Can we zoom on the next-to-last 2 bullet point (as read): "If you carry adult content, 3 have a policy..." 4 A. Uh-huh. 5 Q. (BY MR. BERG) This section reads (as read): 6 "If you're carrying adult material, you should already 7 have a policy for its sale and display that is informed 8 by a thorough understanding of your community's 9 standards. This policy should be spelled out in your 10 employee manual and reinforced with training and 11 periodic meetings with your staff. Your store's 12 spokesman should be able to articulate this policy to 13 the media and public and explain how it is consistent 14 with the standards of your community." 15 Did I read that correctly? 16 A. Uh-huh. 17 Q. (Indicating.) 18 A. Yeah, yes. 19 Q. Community -- if community standards is so broad 20 that it's applied inconsistently, as you said 12 minutes 21 ago, why would Comic Book Legal Defense Fund advise 22 vendors to implement a community standards policy? 23 A. Okay. So you're familiar with Miller tests, 24 right -- 25 Q. (No response.)</p>
<p style="text-align: right;">Page 67</p> <p>1 standard. 2 MR. BERG: Can we, please, open the 3 document, CBLDF 1 to 368? 4 THE TECHNICIAN: (Complies.) 5 MR. BERG: Can we please go to Page 32? 6 Sorry. Page 31. 7 THE TECHNICIAN: (Complies.) 8 (Exhibit E marked.) 9 A. Uh-huh. 10 Q. (BY MR. BERG) Is this the Comic Book Legal 11 Defense Fund's Retailer Resource Guide? 12 A. That does appear to be it. 13 MR. BERG: Could we please go to the next 14 page, Page 32? 15 THE TECHNICIAN: (Complies.) 16 Q. (BY MR. BERG) At the top it says (as read): 17 "CBLDF advisory. How to manage a media attack." 18 A. Uh-huh. 19 Q. Did I read that correctly? 20 A. That is correct. 21 Q. Are you familiar with this document? 22 A. Yes, yes. 23 MR. BERG: Could we go to the next page, 24 Page 33? 25 THE TECHNICIAN: (Complies.)</p>	<p style="text-align: right;">Page 69</p> <p>1 A. -- which HB 900 does not follow by stripping 2 one element of it, patently offensive. And it 3 doesn't -- you don't have peer interests. You don't 4 have any of that stuff in it. So you skip very small -- 5 one portion of it. So -- and you don't have literary, 6 artistic, political value. You don't -- you know, you 7 don't go into peer interests and the full scope of 8 obscenity law. We have different concepts there. 9 Decency, you know. So, you know, that's -- we're 10 talking about apples and oranges, first, here in terms 11 of -- in terms of the context. 12 Second of all, with respect to dealing with 13 community standards and the obscenity context, that's 14 going to be a basic aspect of risk management. So you 15 want to understand what -- you know, why are they 16 producing this guide? Because this Comic Book Legal 17 Defense Fund was founded after we had a wave of arrests 18 -- starting one particular arrest and conviction, which 19 we got overturned of a comic shop realtor -- retailer, 20 who was convicted of selling books, again, that are now 21 acknowledged to be literary classics. 22 So what you want to do if you're selling 23 anything is understand how all of your works fit within 24 the current ambit of obscenity law. That's sort of 25 legal strategy 101. And one of those elements is</p>

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<p style="text-align: right;">Page 70</p> <p>1 looking at the Miller test and understanding, okay, what 2 does that mean in terms of what does community standards 3 mean there? How does it relate to the other aspects -- 4 other elements of the Miller test, and how do we 5 justify -- how do we provide a viable, legal argument 6 that you, as a retailer, are not -- that what you're 7 doing is consistent with the standards of your 8 community?</p> <p>9 Now, how community standards are applied is 10 -- and understood is something that -- I'm not quite 11 sure people who are advocating for community standards 12 as a clear and love for morality -- if it says what it 13 really think that it says. So, for example, you know, 14 one of the arguments I've made in a different court case 15 was -- is if you're looking at determining community 16 standards. We now have a lot of data for determining 17 community standards. So we have some people saying that 18 community standards would mean strict morality 19 accessible {sic} to kids -- well -- and if certain 20 things have to be inaccessible to kids.</p> <p>21 Well, what do you do if you have -- how 22 many households in the community have HBO? How many 23 households in the community have Netflix? How many 24 households in the community have Hulu? And allow that 25 in their phones and in their televisions or Roku or</p>	<p style="text-align: right;">Page 72</p> <p>1 this is a retailer's guide, so the retailer has 2 material. The retailer doesn't want to be arrested, so 3 the retailer -- and the retailer wants to be able to 4 provide an arrest -- a defense if they are arrested. 5 And so they want to understand their local community. 6 They want to understand their market, what books are 7 selling, what books need to be accepted. So this is 8 just the reality of the Miller test, and so they're 9 trying to -- they're trying to work within the Miller 10 test.</p> <p>11 Is that an endorsement of every single 12 application of the word "community standards"? No. 13 There's lots of different ways that the word -- phrase 14 "community standards" is used.</p> <p>15 This is simply people want to be sure that 16 they cannot be justifiably arrested for an obscenity 17 charge. Or if they are, that they can challenge it; and 18 this is part of that defense. Comic Book Legal Defense 19 Fund. That's what this is about.</p> <p>20 Q. Doesn't this guide presume that you are able to 21 educate people to implement the standard? Otherwise, 22 are you just offering false hopes to these retailers by 23 having them follow this policy?</p> <p>24 A. All right.</p> <p>25 MR. LAMBERT: Objection, form.</p>
<p style="text-align: right;">Page 71</p> <p>1 whatever they're using without any child blocker, you 2 know.</p> <p>3 There are a lots of different ways for 4 determining community standards that we're now able to 5 do that go beyond the very simplistic notion that if 6 there's any nudity, it's bad. So -- and, therefore, the 7 community is against it. So you want to be able to make 8 this argument.</p> <p>9 And, again, it's a matter of risk 10 management. That isn't a matter of saying that we're in 11 favor of community standards particularly stripped of 12 any connection to the Miller test -- which is, again, 13 what I'm dealing with specifically in HB 900. It's 14 simply this is -- this is -- this is obscenity law. 15 This is obscenity law. Something that's gotten -- 16 that's been misapplied in a number of context, so if you 17 want to make sure that if it's applied to you, you can 18 respond to that accusation. Then you want to understand 19 what the community is and what the standards are, and 20 there are -- there are ways of defining them that go 21 beyond the -- the way of HB 900.</p> <p>22 Q. Does the Comic Book Legal Defense Fund resource 23 guide presume that these vendors can implement a 24 community standards policy?</p> <p>25 A. Again, we make no -- and this is -- particular</p>	<p style="text-align: right;">Page 73</p> <p>1 A. I ring false hope. I laugh at that because 2 this is the law. And when you're dealing with law and 3 you're dealing with trying to develop a policy that 4 complies with the law, it's not offering false hope to 5 say, okay, this -- the Miller test is a standard in this 6 particular thing. The -- there's certain elements of 7 the Miller test here. They are bang, bang, bang. 8 Develop, essentially, a memo to file so that you're able 9 to defend if anybody challenges you and says you're 10 selling obscene material.</p> <p>11 Will everybody agree with it? Are there -- 12 are there people out there who believe? And there are. 13 There are sheriffs who believe. There are district 14 attorneys out there who believe that any work that 15 includes any discussion -- gender identity or sexual 16 expression -- below the age of 18 or 17 -- whatever the 17 age of consent is in their jurisdiction -- is inherently 18 harmful to minors.</p> <p>19 Do I agree with that? No. Do I believe 20 the law should interpret that interpretation? No. Do I 21 believe that the law will stop them from using the law 22 to threaten people? No, they won't.</p> <p>23 You call it false hope to say here you have 24 to have an argument against it. No. You're giving 25 people an argument to -- to be able to survive that kind</p>

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<p style="text-align: right;">Page 74</p> <p>1 of attack -- using the law in, I believe, an 2 unconstitutional way. 3 It's the nature of our system that, 4 unfortunately, there are a lot of people who use 5 constitutional standards in an unconstitutional way or 6 even act as if they don't exist, as I believe is in 7 Texas and HB 900. So I don't think it's people giving 8 false hope to give them -- to tell them to take steps 9 against an inappropriate statement or application of the 10 law. 11 Q. (BY MR. BERG) Would it be correct to say that 12 the primary purpose of this advisory then is to protect 13 retailers from legal liability, and that it's only a 14 secondary goal that material violating community 15 standards not be sold? 16 A. I didn't write this book. I don't know if you 17 noted the date, but the date was 2019; and I came 18 onboard in 2020. So you're asking me to opine on what 19 the intent was. I don't know what the intent was. I 20 know what it says, but I can't speak to the intent 21 because I wasn't there. 22 Q. This policy -- it says (as read): "It should 23 be spelled out in your employee manual and reinforced 24 with training and periodic meetings with your staff." 25 A. Uh-huh.</p>	<p style="text-align: right;">Page 76</p> <p>1 A. I think you're -- 2 MR. LAMBERT: Objection, form. 3 A. -- you're changing the definition of community 4 depending on -- point you want to score. So -- which 5 is, again, a problem particularly when you're dealing 6 with this "community standards of decency" question 7 without any consideration of value again. HB 900 and 8 obscenity law don't track. 9 I live in New York State. I happen to be 10 in a small town in New York State. And later today, 11 assuming this gets done before midnight, I'll be going 12 down to Manhattan about an hour away. 13 The standard in this community can differ 14 from the standard in New York. There is no New York 15 standard of community. There's no New York community 16 standard. There's lots of them here, and somebody who's 17 trying to deal with a potential for legal action in 18 their community needs to be able to anticipate that. 19 There is no Texas community standard at 20 this point. It's lots of different communities in 21 Texas. I used to teach in Texas. 22 I was a law professor at Southern Methodist 23 University back in the day, and I know very well that 24 there are differences in community from Dallas to 25 Austin. I know that there are differences in community</p>
<p style="text-align: right;">Page 75</p> <p>1 Q. Businesses already had employee handbooks prior 2 to HB 900, correct? 3 A. Uh-huh. 4 Q. And businesses already provided training to 5 their employees prior to HB 900, correct? 6 A. This book is from 2019, and I know just based 7 on personal experience that companies had employee 8 manuals and trainings and meetings for decades before. 9 So, yes, there have been -- there's a long history of 10 employee manuals, training, and periodic meetings. 11 Q. Would you agree with me that contemporary 12 community standards in Texas could be different than in 13 New York? 14 MR. LAMBERT: Objection, form. 15 A. They could be the different. They can 16 different. They can be the same. It depends on the 17 community, and it depends -- in New York and the 18 community in -- it depends on the community in Texas, 19 and it depends on the community in New York. 20 Q. (BY MR. BERG) So would you agree with me that 21 it's theoretically possible that even though, you, in 22 New York, disagree that a piece of literature would 23 violate community standards, a seller or agency -- 24 government agency in Texas might find that the same work 25 violated community standards?</p>	<p style="text-align: right;">Page 77</p> <p>1 between, you know, Dallas and Waco, you know. 2 So to say that there's a Texas community 3 versus a New York community, as if we're these liberal 4 New Yorkers versus the upstanding Texas people, is a 5 complete misunderstanding of the reality in New York, 6 and it's a complete misunderstanding of the reality in 7 Texas. 8 Q. (BY MR. BERG) Why would it be incorrect to say 9 that a state could have a community standard? 10 A. You really have to look at your particular law. 11 What -- how is community standard defined? And, again, 12 you're going to have to pull up 21. 13 It defensive to community standards. 14 What's the reference community? I mean, is your 15 interpretation as a state of Texas -- and it's not mine. 16 It's totally yours. Is your interpretation of community 17 standards for purposes of HB 900 -- HB 900 that there's 18 one community in the state of Texas, and that's the 19 State of Texas. 20 And that the -- you know, is there one 21 standard of decency that you can tell to the publisher 22 that there's one absolute standard of decency with such 23 clear boundaries that there's no ambiguity, and there's 24 bright line rules for enacting, no. I mean, it's widely 25 varied.</p>

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<p style="text-align: right;">Page 78</p> <p>1 You know, I -- what do you do? I've taught</p> <p>2 in Texas, and I know that there's wide definitions of</p> <p>3 decency within my own classroom, you know, back when I</p> <p>4 taught there.</p> <p>5 Q. Is it Comic Book Legal Defense's position --</p> <p>6 sorry. Comic Book Legal -- Legal Defense -- sorry --</p> <p>7 Comic Book LDF's position that a state can only ban</p> <p>8 material that is legally obscene?</p> <p>9 MR. LAMBERT: Objection, form.</p> <p>10 A. I don't recall saying that. I was talking</p> <p>11 about -- I was comparing standards. I wasn't making a</p> <p>12 prescriptive statement about what states can and cannot</p> <p>13 regulate in different contexts.</p> <p>14 Q. (BY MR. BERG) This was a -- this was a -- my</p> <p>15 next question -- separate from the last question.</p> <p>16 A. And just to understand: Are we sort of --</p> <p>17 we're getting -- you're taking into the realm of</p> <p>18 constitutional analysis sort of as a general -- like if</p> <p>19 I were teaching a law school course because this</p> <p>20 deposition seems to be going all over the map in terms</p> <p>21 of the questions you're asking me, and it's hard for me</p> <p>22 to assess the specific context that you want me to</p> <p>23 address.</p> <p>24 Q. In the Complaint, is Comic Book LDF alleging</p> <p>25 that Texas can only ban books from its schools that are</p>	<p style="text-align: right;">Page 80</p> <p>1 THE TECHNICIAN: (Complies.)</p> <p>2 A. Page 7, please.</p> <p>3 MR. BERG: Next page, please.</p> <p>4 THE TECHNICIAN: (Complies.)</p> <p>5 A. Next page.</p> <p>6 MR. BERG: Next page. We can probably skip</p> <p>7 over Jurisdiction and Exhibits.</p> <p>8 A. We like jurisdiction.</p> <p>9 THE TECHNICIAN: (Complies.)</p> <p>10 A. Next page, please.</p> <p>11 THE TECHNICIAN: (Complies.)</p> <p>12 A. Next page, please.</p> <p>13 THE TECHNICIAN: (Complies.)</p> <p>14 A. Next page, please.</p> <p>15 THE TECHNICIAN: (Complies.)</p> <p>16 A. Next page, please.</p> <p>17 THE TECHNICIAN: (Complies.)</p> <p>18 A. Actually, can you go back one, please?</p> <p>19 THE TECHNICIAN: (Complies.)</p> <p>20 A. Okay. Next page, please.</p> <p>21 THE TECHNICIAN: (Complies.)</p> <p>22 A. Next page, please.</p> <p>23 THE TECHNICIAN: (Complies.)</p> <p>24 A. Next page, please.</p> <p>25 THE TECHNICIAN: (Complies.)</p>
<p style="text-align: right;">Page 79</p> <p>1 legally obscene?</p> <p>2 MR. LAMBERT: Objection, form.</p> <p>3 A. Let's take a look at the Complaint and see what</p> <p>4 we said. Go through it.</p> <p>5 (Simultaneous cross-talk ensues.)</p> <p>6 MR. BERG: -- the Complaint.</p> <p>7 THE TECHNICIAN: (Complies.)</p> <p>8 A. Paragraph by paragraph. I want to be -- I want</p> <p>9 to answer your question accurately and fairly, so let's</p> <p>10 just go through the Complaint paragraph by paragraph.</p> <p>11 Q. (BY MR. BERG) Okay.</p> <p>12 MR. BERG: Please go to Paragraph 1 of the</p> <p>13 Complaint.</p> <p>14 THE TECHNICIAN: (Complies.)</p> <p>15 A. We can continue to Page 2.</p> <p>16 MR. BERG: Next page, please.</p> <p>17 THE TECHNICIAN: (Complies.)</p> <p>18 A. Page 3.</p> <p>19 MR. BERG: Next page, please.</p> <p>20 THE TECHNICIAN: (Complies.)</p> <p>21 A. Page 4. I mean, Page 5.</p> <p>22 MR. BERG: Next page, please.</p> <p>23 THE TECHNICIAN: (Complies.)</p> <p>24 A. Page 6, please.</p> <p>25 MR. BERG: Next page, please.</p>	<p style="text-align: right;">Page 81</p> <p>1 A. Next page, please.</p> <p>2 THE TECHNICIAN: (Complies.)</p> <p>3 A. Next page, please.</p> <p>4 THE TECHNICIAN: (Complies.)</p> <p>5 A. Next page, please.</p> <p>6 THE TECHNICIAN: (Complies.)</p> <p>7 A. Next page, please.</p> <p>8 THE TECHNICIAN: (Complies.)</p> <p>9 A. Next page, please.</p> <p>10 THE TECHNICIAN: (Complies.)</p> <p>11 A. Next page, please.</p> <p>12 THE TECHNICIAN: (Complies.)</p> <p>13 A. Next page, please.</p> <p>14 THE TECHNICIAN: (Complies.)</p> <p>15 A. Next page, please.</p> <p>16 THE TECHNICIAN: (Complies.)</p> <p>17 A. Next page, please.</p> <p>18 THE TECHNICIAN: (Complies.)</p> <p>19 A. Next page, please.</p> <p>20 THE TECHNICIAN: (Complies.)</p> <p>21 A. Next page, please.</p> <p>22 THE TECHNICIAN: (Complies.)</p> <p>23 A. Next page -- hold on one second. Just want to</p> <p>24 finish this.</p> <p>25 Next page, please.</p>

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<p style="text-align: right;">Page 82</p> <p>1 THE TECHNICIAN: (Complies.)</p> <p>2 A. Next page, please.</p> <p>3 THE TECHNICIAN: (Complies.)</p> <p>4 A. Next page, please.</p> <p>5 THE TECHNICIAN: (Complies.)</p> <p>6 A. Thanks for the review. That was very helpful</p> <p>7 because I had -- it had slipped my mind about Katy ISD,</p> <p>8 and I'm glad that you -- that you refreshed my memory by</p> <p>9 having that there. So that was actually very helpful in</p> <p>10 the context of impact of HB 900 on after its passage.</p> <p>11 Because Katy as, you know, is a district</p> <p>12 where there was activity before HB 900, and there's also</p> <p>13 been ongoing activity afterwards, and I apologize of</p> <p>14 having that slip my mind in the context of the</p> <p>15 deposition. So that was very helpful, and we can -- I</p> <p>16 can amend my past statement with respect to that.</p> <p>17 Obviously, it has an impact on graphic novels. So,</p> <p>18 again, that was very helpful to me.</p> <p>19 So would you mind repeating your question</p> <p>20 again?</p> <p>21 Q. (BY MR. BERG) Yes.</p> <p>22 Is Comic Book LDF alleging that a book or a</p> <p>23 comic must be legally obscene to be removed from a</p> <p>24 school?</p> <p>25 A. Okay. I reread the entire thing, and my</p>	<p style="text-align: right;">Page 84</p> <p>1 something.</p> <p>2 THE WITNESS: You know, I snuck a couple of</p> <p>3 squares of chocolate in the previous break, so I think I</p> <p>4 got a little energy to go.</p> <p>5 THE STENOGRAPHER: This is --</p> <p>6 THE WITNESS: They had -- they Corn Flakes</p> <p>7 in them, so they're extra nutritious.</p> <p>8 MR. LAMBERT: There you go.</p> <p>9 THE STENOGRAPHER: This is the court</p> <p>10 reporter. I would like to take a break, please.</p> <p>11 (Simultaneous cross-talk ensues.)</p> <p>12 MR. LAMBERT: No problem.</p> <p>13 THE STENOGRAPHER: Thank you.</p> <p>14 THE WITNESS: I highly recommend chocolate</p> <p>15 with Corn Flakes, by the way. If you got them, they're</p> <p>16 really good.</p> <p>17 MR. BERG: Let's go off the record.</p> <p>18 THE VIDEOGRAPHER: Going off the record</p> <p>19 the. Time is 11:25 a.m. Central.</p> <p>20 (A break was taken from 11:25 a.m. to</p> <p>21 11:36 a.m.)</p> <p>22 THE VIDEOGRAPHER: We are back on the</p> <p>23 record. The time is 11:36 a.m. Central.</p> <p>24 Please proceed.</p> <p>25 MR. BERG: We go to the Complaint Page 75,</p>
<p style="text-align: right;">Page 83</p> <p>1 understanding of the Complaint was that it was very</p> <p>2 specifically targeting HB 900 and specific elements of</p> <p>3 HB 900, and that it was not a constitutional treatise on</p> <p>4 all aspects in which expressive material can and cannot</p> <p>5 be removed from schools.</p> <p>6 So I was trying to find a statement in</p> <p>7 there that it was an absolute, and I'm just going to --</p> <p>8 I'm just bounding myself by that. I'm not going to</p> <p>9 constitutional doctrine or any of that because I think</p> <p>10 that's outside the scope of what we're doing here. I'm</p> <p>11 just looking at -- I'm just looking at the complaint,</p> <p>12 and I don't see that kind of sort of broad, discursive</p> <p>13 blackletter analysis of what -- of expressive materials</p> <p>14 in schools. I don't see that there.</p> <p>15 So I know I wasn't sure. I didn't</p> <p>16 understand that -- I didn't understand that to be the</p> <p>17 purpose of this -- the purpose of this lawsuit.</p> <p>18 Q. Very well.</p> <p>19 Would you like a break, or shall we</p> <p>20 continue?</p> <p>21 THE WITNESS: Michael, I'll let it be your</p> <p>22 call.</p> <p>23 MR. LAMBERT: Yeah, it's up to you, Jeff.</p> <p>24 I know it's 12:00. It's almost 12:30 your time, so I</p> <p>25 don't know if you wanted a little break to eat</p>	<p style="text-align: right;">Page 85</p> <p>1 Paragraph 13, please.</p> <p>2 THE TECHNICIAN: (Complies.)</p> <p>3 MR. BERG: Page 75, Page 13. Paragraph 13</p> <p>4 of the Declaration.</p> <p>5 THE TECHNICIAN: (Complies.)</p> <p>6 Q. (BY MR. BERG) Paragraph 13 of the Declaration</p> <p>7 reads (as read): "For creators in the comic arts, these</p> <p>8 restrictions would substantially limit their ability to</p> <p>9 write freely on topics of their choosing and to have</p> <p>10 their work purchased by school districts and available</p> <p>11 to students."</p> <p>12 Did I read that correctly, Mr. Trexler?</p> <p>13 A. You did indeed.</p> <p>14 Q. In this paragraph, are you saying that Comic</p> <p>15 Book LDF members are currently selling books to Texas</p> <p>16 schools that would be marked sexually explicit under HB</p> <p>17 900, or that that is -- that that is a concerned?</p> <p>18 A. I am saying that -- okay. Let's read it</p> <p>19 literally, okay? Read this literally.</p> <p>20 Now, there's lots of different aspects of</p> <p>21 this law and the impact of this law that we could be</p> <p>22 discussing, but the scope of this question is specific</p> <p>23 to this paragraph and we're going to parse it, okay?</p> <p>24 (as read): "For creators in the comic arts" -- "these</p> <p>25 restriction would substantially limit their ability to</p>

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<p style="text-align: right;">Page 86</p> <p>1 write freely on topics of their own choosing and to have 2 their work purchased by school districts and available 3 to students," okay? So that is a forward-looking 4 statement. 5 Now, I'm not -- in answering your question 6 about Paragraph 13, I am not denying that there is an 7 impact for present sales or past sales. I am simply -- 8 you asked me what is in that paragraph? And I told you 9 what that paragraph is. 10 That paragraph is for creators in the comic 11 arts. These restrictions would limit their ability to 12 write freely and to have their work purchased. 13 Q. So are you saying that in the future Comic Book 14 LDF members would sell comics or books to Texas -- 15 (Simultaneous cross-talk ensues.) 16 A. I'm saying it would -- 17 (Simultaneous cross-talk ensues.) 18 Q. (BY MR. BERG) -- sexually explicit -- 19 (Simultaneous cross-talk ensues.) 20 A. I'm saying that it would have an impact on 21 their ability -- 22 THE STENOGRAPHER: Excuse me. Excuse me. 23 This is the court reporter. I need the question 24 repeated again. 25 Q. (BY MR. BERG) Are you saying that in the</p>	<p style="text-align: right;">Page 88</p> <p>1 purchased. 2 So, again, I kind of need to have your 3 specific definition of the scenario you're trying to get 4 me to -- what you're trying to have me say here. 5 Q. So you're saying -- you said that this is a 6 future concern, correct? 7 A. It's a present concern, and it's based in 8 experience of the past. So, I mean, HB -- HB 900 was 9 enacted at that point. 10 And so, you know -- again, you're trying to 11 read -- I'm trying to be very specific with you here. 12 So -- and I think you're trying to get to read one 13 sentence as a statement of the entire case and a 14 statement of all the -- like a substitute for all of the 15 allegations in the Complaint. 16 And, specifically, this is addressing the 17 scenario where that people in light of -- in light of HB 18 900, which has now been around for a while, it would 19 affect their ability to write freely on topics of their 20 choosing and to have their work purchased by school 21 districts because it would impact the decision the 22 school districts made. Having already seen with Katy 23 has -- is -- people are now having to make purchasing 24 based on -- and re-decisions based on the possibility 25 that what's in HB 900, including the rating system,</p>
<p style="text-align: right;">Page 87</p> <p>1 future Comic Book Legal Defense Fund members would sell 2 comics or books to Texas schools that would be marked 3 sexually explicit under HB 900? 4 MR. LAMBERT: Objection, form. 5 A. Now, that -- that's not a statement. I am 6 saying that there's the prospect of that happening, and 7 I am saying that -- am I saying that it is certain that 8 we have somebody who would write something that is -- I 9 said what I said, you know, which is that there is this 10 prospect that it has this impact and impedes speech; 11 that it's overbroad; that it could have its reading 12 {sic}. You're trying to get me to say something, and I 13 understand why you're doing it. 14 But, again, this is -- we have -- we have 15 people who have nationwide markets including in Texas. 16 We have people who, you know, they would love to have 17 their book adopted in a school in Texas, in a library in 18 Texas. It's a -- every copy is a sale, and, now, 19 there's this risk. 20 Q. (BY MR. BERG) So are you saying that you're 21 not sure whether Comic Book LDF members will sell books 22 or comics to Texas schools that would be marked sexually 23 explicit? 24 A. I am saying it would substantially limit their 25 ability to write freely on topics and to have their work</p>	<p style="text-align: right;">Page 89</p> <p>1 could at some point be imposed. So that's what I'm 2 stating here. 3 Q. Do -- 4 (Simultaneous cross-talk ensues.) 5 A. -- 2023 -- so in a very real sense, we are 6 living in the future. 7 Q. (BY MR. BERG) Do Comic Book LDF members intend 8 to sell Comic Books to Texas schools in the future that 9 could fall under the definition of sexually explicit in 10 HB 900? 11 MR. LAMBERT: Objection, form. 12 A. We have members that have a regular market in 13 Texas, you know, and that's always a possibility and 14 even an aim, you know. 15 So Texas is a very marketplace. Texas 16 schools are a big marketplace, and the school market is 17 a significant percentage of retail market. They're 18 people who have done studies on this, and they're plenty 19 of people who have done analysis on the impact of Texas 20 nationwide. 21 And so there are a number of people who 22 would love to sell to Texas schools. There are 23 retailers who would love to sell to Texas schools in 24 their community. There are distributors who would love 25 to sell to Texas schools around the state.</p>

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<p style="text-align: right;">Page 90</p> <p>1 And this -- particularly, if they have to 2 put in -- brand each book sexually explicit or sexually 3 relevant, if there's a scintilla of a connection of 4 anything related to sexuality in it, which covers a wide 5 range of material, it's -- you know, this has an 6 significant impact.</p> <p>7 Q. (BY MR. BERG) You would agree with me that 8 even Comic Book members wrote comic books specifically 9 for Texas schools, there's no guarantee that Texas 10 schools would buy any of the comic books, correct?</p> <p>11 A. There's no guarantee that Texas would buy any 12 of the comic books if there's also a likelihood under 13 this statute that either Texas wouldn't buy them, or 14 authors would feel a chilling effect in their ability to 15 write certain things without having a significant 16 detrimental effect on the market for their works or 17 retailers, as well, you know; but this paragraph here is 18 about creators. So that's why I'm focused on creators.</p> <p>19 Q. How do you quantify whether writers are writing 20 about what they want to write about?</p> <p>21 A. I can tell you, you know, in terms of numbers 22 if there's a poll of writers and that sort of thing. I 23 don't know -- I am not an econometrician. When I did my 24 Ph.D. work, I focused primarily in intellectual social 25 history. I did not do statistics. I know there are</p>	<p style="text-align: right;">Page 92</p> <p>1 (Simultaneous cross-talk ensues.)</p> <p>2 A. Because it's quantitative studies. You're 3 asking me to do something that I don't do. I take 4 professional -- my professional training very seriously. 5 They're things that I'm trained; they're 6 things I'm not trained in. You're asking me how I would 7 do XYZ. It's like asking me how I would do surgery. 8 You know, there are people out there who 9 can do this. I know that I have heard enough of a 10 pervasive concern that is a real concern, and so it's a 11 concern that we're addressing here. 12 I would consider that since, you know, 13 everybody that creates in this business and wants to 14 make some money out of it, either as a side business or 15 as their full-time career, which many comic creators do, 16 I know that there is a significant chilling effect. I 17 know there are people who make -- beyond creators, I 18 know there are people out there who have either stopped 19 buying material for their stores or even shut down their 20 store or stopped selling comics entirely because of the 21 concerns here. 22 You know, they're people who do not want 23 their works branded sexually explicit. That is -- that 24 is -- or even sexually relevant. You're redefining. 25 You're forcing the person -- the creator to find their</p>
<p style="text-align: right;">Page 91</p> <p>1 people who specialize in that thing -- that sort of 2 thing, but quantitative analysis is not something that I 3 do. So, you know, I would defer to others on that.</p> <p>4 Q. That being the case, if HB 900 were found to be 5 constitutional and legal, how would you assess whether 6 Comic Book LDF members had altered their writing in the 7 future?</p> <p>8 A. Well, given that I have people telling me that 9 they're altering their writing now, I -- there would be 10 two ways, you know. It is enough of a concern given the 11 fears that I've heard and people around the country 12 because of the Texas law.</p> <p>13 And we're just talking about creators here. 14 I'm not talking about distributors and publishers. 15 There's a whole other thing there where it's equally 16 concerned.</p> <p>17 I can tell you the concern is real. The 18 concern is pervasive. It's something we talk about at 19 comic conventions.</p> <p>20 It's something I talk about in 21 conversations with people regularly. They come to me. 22 I do not go to them.</p> <p>23 And if it came down to quantifying it, if 24 we wanted to do a study, I would probably, you know, I'd 25 bring in some help on that one.</p>	<p style="text-align: right;">Page 93</p> <p>1 work -- their entire work by single panel or single 2 scene.</p> <p>3 It's -- it's, you know, for a creator, that 4 is -- that's incredibly discouraging. It's -- you're 5 doing the equivalent of putting an X rating on every 6 book that just happens to have an incidental reference 7 to sex, and that has a serious chilling effect, and 8 that's the option you get --</p> <p>9 (Simultaneous cross-talk ensues.)</p> <p>10 Q. (BY MR. BERG) In that statement, are you 11 presuming that every book with any sexual content would 12 be rated either sexually relevant or sexually explicit?</p> <p>13 A. I am seeing -- I am seeing -- I am living in a 14 world where books where people are fully clothed are 15 being condemned as being sexually explicit. I am living 16 in a world where an image of a mouse -- anthropomorphic 17 mouse in a bathtub is considered sexually explicit and 18 withdrawn from schools. That's the world I'm living in. 19 That's what I deal with daily.</p> <p>20 And this is not just said by, you know, 21 loons on the Internet. This is said by sheriffs and 22 district attorneys and teachers and principals, 23 so-called educators. You know, this is the world I live 24 in. This is the world creators live in. 25 You're presuming some sort of rationale</p>

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<p style="text-align: right;">Page 94</p> <p>1 above. You know, we have this narrow way of 2 interpreting the law. That's not the way in which your 3 law has been introduced, and that's not the way people 4 are reading this text. And that is not -- your 5 particular -- Zachary's way of reading this is not the 6 way -- is not the actual language of the text, and you 7 will not have Zachary at the shoulder of everybody 8 making a decision here. That's not -- that's not what I 9 see. 10 Q. Aren't you also assuming that it'll be 11 implemented in a way that will bring in material not 12 covered under the wording of the statute? 13 A. Look. Read the testimony, you know. It's 14 linked in the Complaint. It's referenced in the 15 Complaint. 16 This is -- when people were advocating for 17 this law, they weren't advocating because there was a 18 flood of all this. They were -- they were -- they were 19 taking works that had real educational value. They had 20 works that -- it is a disgraced to call them sexually 21 explicit on the basis of one panel or one scene. 22 It's -- this is -- what you're -- what 23 you're doing really shocks the conscious in terms of an 24 educational institution, particularly an educational 25 institution under currently understanding of Civil</p>	<p style="text-align: right;">Page 96</p> <p>1 people are de-emphasizing the educational value of 2 materials, is that correct, at least a part of what 3 you're saying? 4 A. That's one element of it. 5 You know, we're talking about a lot here, 6 right? 7 Q. Certainly. 8 A. We're talking about flaws of the statute. 9 We're talking about constitutional infirmities of the 10 statute. We're talking about impact of the statute. 11 There's a lot going on here. 12 Q. Well, let's talk about the educational value. 13 Who is the correct party to assessed -- 14 assess a book's educational value in a public school? 15 Who's the -- who decides? 16 A. Again, we're going beyond here -- beyond the 17 scope of -- 18 (Simultaneous cross-talk ensues.) 19 Q. (BY MR. BERG) Well, you're saying that the 20 government shouldn't decide. 21 (Simultaneous cross-talk ensues.) 22 Q. (BY MR. BERG) So who should decide? 23 A. Is that what I'm saying? I'm saying that the 24 rules you give here are bad. Is that -- are you 25 extrapolating from the fact that I find constitutional</p>
<p style="text-align: right;">Page 95</p> <p>1 Rights law. So it's -- there are Supreme Court cases 2 that you could declare sexually explicit based on this 3 reading if that particular case doesn't fall under the 4 narrow parameters of a curriculum that you couldn't have 5 in a library. Because to my knowledge, most schools in 6 Texas aren't law schools when they're K through 12. 7 So I happen to be able to read Hebrew and 8 biblical Greek. That's what I went into graduate school 9 to do and college to do, and I can tell you there are 10 things in the bible that don't relate to your 11 curriculum. And the language, particularly if you read 12 it in the original, but it also comes through in a 13 number of translations, is very stark, even in King 14 James version. You just haven't seen it. 15 Shakespeare. Read "The Taming of the 16 Shrew." Under your -- read -- "The Taming of the Shrew" 17 is filled with sexual innuendo, not to mention other 18 books. That would be sexually relevant under your 19 statute here as something you could limit to checking 20 out. 21 The fact that certain people don't 22 understand the language doesn't mean that other people 23 will read it who do understand the language and say this 24 is actually a danger. That's how overbroad this is. 25 Q. You talked a little bit about how you feel that</p>	<p style="text-align: right;">Page 97</p> <p>1 infirmities with certain elements of a particular 2 certain statute to be a blanket statement about 3 education? I'm not sure I follow the logic. 4 Q. Would you agree that someone decides which 5 books go in public school libraries? 6 A. Someone decides, yeah. 7 Q. Who is the appropriate party to decide that? 8 A. I'm going to go away from a prescriptive aspect 9 to a descriptive aspect, okay? Because I think that 10 that's important here. Because you seem to be asking 11 these prescriptive question, as if I'm designing the 12 system from the ground up, which I don't understand to 13 be the purpose of the Complaint, and I don't understand 14 to be the purpose of this deposition. 15 Like I said -- 16 (Simultaneous cross-talk ensues.) 17 Q. (BY MR. BERG) Well, you're -- sorry. Go 18 ahead. 19 A. The fact -- the fact that I have trouble with 20 HB 900 and the way it's framed -- particularly, the 21 standards and that particular thing -- does not mean -- 22 if I think that a speed limit of 25 miles per hour on an 23 interstate is inappropriate, that doesn't mean that I 24 believe government has no role in imposing a speed 25 limit, okay?</p>

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<p style="text-align: right;">Page 98</p> <p>1 In this instance here, let's take a</p> <p>2 descriptive role rather than prescriptive role, and</p> <p>3 let's not make the logical leaps that you've been making</p> <p>4 in this. And I know you're trying to trap me, and</p> <p>5 that's very good.</p> <p>6 In this particular system, we have a public</p> <p>7 school system which there are multiple constituencies</p> <p>8 that can influence any decision. We have librarians.</p> <p>9 We have principals. We have superintendents. We have</p> <p>10 school boards.</p> <p>11 You have mayors. You have voters. You</p> <p>12 have parents; but, again, the people who have a voice in</p> <p>13 the school system go beyond parents. For just parents,</p> <p>14 property taxes that everybody had to pay into.</p> <p>15 Q. They're a killer.</p> <p>16 A. You have state legislatures. You have</p> <p>17 bureaucrats, people who work in regulatory bodies, and</p> <p>18 we have also have a federal overlay. All of these</p> <p>19 people have a voice in school policy.</p> <p>20 Nothing I say here is going to eliminate</p> <p>21 that infrastructure. That is just a fact. So it's a</p> <p>22 complex system with a number of people who make</p> <p>23 decisions that affect the contents of that system.</p> <p>24 That's an answer to your question.</p> <p>25 Q. Would you agree that TEA has a role in managing</p>	<p style="text-align: right;">Page 100</p> <p>1 trying to get me to say --</p> <p>2 Q. No. That was my question.</p> <p>3 A. TEA should have a role.</p> <p>4 Q. Okay. Let's move on.</p> <p>5 What information does Comic Book LDF</p> <p>6 maintain regarding what its members sell to Texas</p> <p>7 schools?</p> <p>8 MR. LAMBERT: Objection, form.</p> <p>9 A. We do not -- I don't think keep records as</p> <p>10 to -- you understand -- you do understand that there's a</p> <p>11 lot that goes into, you know, business records, right?</p> <p>12 Some companies keep a lot of that as trade secrets or</p> <p>13 just proprietary information. There are also antitrust</p> <p>14 concerns in getting information from --</p> <p>15 Q. (BY MR. BERG) We don't need to go into</p> <p>16 antitrust law.</p> <p>17 (Simultaneous cross-talk ensues.)</p> <p>18 Q. (BY MR. BERG) I think your answer -- your</p> <p>19 answer is that Comic Book LDF does not maintain sales</p> <p>20 numbers of its members to Texas schools; is that</p> <p>21 correct?</p> <p>22 A. No, I don't. I just ask --</p> <p>23 Q. Okay.</p> <p>24 A. No.</p> <p>25 MR. BERG: Let's go back to Exhibit E, the</p>
<p style="text-align: right;">Page 99</p> <p>1 the Texas public school system?</p> <p>2 A. Okay. Would I agree that TA {sic} has a role</p> <p>3 is a statement that can be taken in two different ways,</p> <p>4 and I'm not sure which one you have.</p> <p>5 Q. Let me rephrase the question.</p> <p>6 A. Yes.</p> <p>7 Q. Would you agree that TEA has a role in</p> <p>8 regulating the content of what is taught in Texas</p> <p>9 schools?</p> <p>10 A. All right. I am going to -- again -- and maybe</p> <p>11 you don't understand what I'm saying here, so I'm going</p> <p>12 to -- give me a second to explain the nature of -- it's</p> <p>13 a combination, and it's an observation about the nature</p> <p>14 of your question.</p> <p>15 There are two ways in terms of just</p> <p>16 understanding language in which your particular question</p> <p>17 and response to that question can be taken. One is</p> <p>18 descriptive, and one is proscriptive, right?</p> <p>19 Prescriptive.</p> <p>20 So descriptive -- would I agree that Texas</p> <p>21 Education Authority has a role? Well, as a matter of</p> <p>22 fact, based on the elements of HB 900 and other aspects</p> <p>23 of Texas state law as they're currently under --</p> <p>24 currently existing and are currently being applied, it</p> <p>25 is a fact that TEA has a role. What I think you're</p>	<p style="text-align: right;">Page 101</p> <p>1 CBLDF 1 through 368 document.</p> <p>2 THE TECHNICIAN: (Complies.)</p> <p>3 MR. BERG: Please go Page 93.</p> <p>4 Q. (BY MR. BERG) What is Common Sense Media?</p> <p>5 A. This is an article from 2014. And so I'm going</p> <p>6 to just qualify this by saying that I was not part of</p> <p>7 the Comic Book Legal Defense Fund in 2014. I did not</p> <p>8 write this article. This article was written by Maren</p> <p>9 Williams.</p> <p>10 Q. I understand.</p> <p>11 As part of the deposition notice, one of</p> <p>12 the topics was Comic Book LDF's responses to defendants'</p> <p>13 discovery, and this is part of that discovery.</p> <p>14 (Simultaneous cross-talk ensues.)</p> <p>15 A. This is part of discovery. I supplied this</p> <p>16 material -- we supplied this material because it's items</p> <p>17 I located. When we start getting into intent and depth</p> <p>18 of knowledge and anything, the inclusion of something in</p> <p>19 discovery as responsive to a particular request is not</p> <p>20 an indication that I know about everything about</p> <p>21 everything that's in the statement.</p> <p>22 So I would say that Common Sense Media is</p> <p>23 an independent nonprofit that rates all sorts of media,</p> <p>24 books, and movies to music and -- on age-appropriate</p> <p>25 scale from 2 to 17. That's what I would say Common</p>

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<p style="text-align: right;">Page 102</p> <p>1 Sense Media is or was. I don't know even if it still 2 exists anymore.</p> <p>3 Q. (BY MR. BERG) Who is Maren Williams? Do you 4 know?</p> <p>5 A. I could -- I think I could have told you in 6 2020 when I was looking into who was writing what, but 7 my memory fails me right now.</p> <p>8 Q. Is she is a former employee or a volunteer?</p> <p>9 A. I -- I don't know.</p> <p>10 I don't know the person's gender. I don't 11 know -- and I'm going to apologize if Maren Williams and 12 I have had conversations since I come onboard, and I 13 forgot it because I meet thousands of people in this 14 job.</p> <p>15 I do apologize. I don't want to -- I don't 16 want to Maren Williams to feel ignored and unappreciated 17 because I appreciate any work anyone has done for us, 18 but I just don't know Maren Williams.</p> <p>19 Q. So you said Common Sense Media rates media. 20 Is Comic Book LDF aware of other entities 21 that rate media whether books or movies?</p> <p>22 A. Well, there are any number of organizations 23 that have evaluative criteria whether a rating or 24 whether a -- statements that this is a -- ever since -- 25 you know, '19, 2020, 2021, there are organizations that</p>	<p style="text-align: right;">Page 104</p> <p>1 Q. (BY MR. BERG) My question was: Whether MPAA 2 in this context was the Motion Picture Association --</p> <p>3 A. Yeah.</p> <p>4 Q. -- or something related to comic books?</p> <p>5 A. Again, I didn't write this, but MPAA here, this 6 is referring to MPAA movies -- ratings on movies and 7 ESRB -- which I assume is on video games. That would be 8 a reference to the Motion Picture Association that does 9 the -- the trade association that does those ratings.</p> <p>10 Q. And you mentioned some entities that more 11 recently had started rating comic books.</p> <p>12 Do you recall any of the names of those 13 organizations or entities?</p> <p>14 A. No.</p> <p>15 I would -- I had to look -- I was looking 16 at them last week in conjunction with a case matter, but 17 I don't remember their names.</p> <p>18 They're pretty commonly and easily 19 searchable. They do graphic novels as well other books.</p> <p>20 These are people who are -- who are -- the sort of 21 people who have been endorsing HB 900.</p> <p>22 Q. Are there any of those sorts of companies that 23 are better than the others? Or in your experience, are 24 they all bad actors, or...</p> <p>25 A. I do it -- I do it -- I look at it on a</p>
<p style="text-align: right;">Page 103</p> <p>1 have arisen that write about graphic novels and other 2 books saying this is content -- this is their content, 3 and this is bad or this is good or whatever.</p> <p>4 There is the MPAA. You know, I do know -- 5 I remember there was an early -- after -- after we did 6 the Virginia Beach case and the lawyers said they were 7 going to next move to ratings, and there was an attempt 8 to have an MPAA rating for book {sic}. I remember 9 challenged that. I told somebody to challenge that 10 because the MPAA ratings were trademarked, and so we 11 ended up getting that taken out of the legislation. So, 12 obviously, I'm aware of that.</p> <p>13 (Simultaneous cross-talk ensues.)</p> <p>14 Q. (BY MR. BERG) Is the MPAA, the Motion Picture 15 Association {sic}, or is the --</p> <p>16 (Simultaneous cross-talk ensues.)</p> <p>17 Q. (BY MR. BERG) -- comic book --</p> <p>18 (Simultaneous cross-talk ensues.)</p> <p>19 A. MPAA, the Motion Picture Association.</p> <p>20 Q. (BY MR. BERG) Okay.</p> <p>21 A. Because you asked books and movies, you know.</p> <p>22 (Simultaneous cross-talk ensues.)</p> <p>23 THE STENOGRAPHER: Excuse me. There's a 24 lot of cross-talk happening, so I need that question and 25 answer repeated.</p>	<p style="text-align: right;">Page 105</p> <p>1 case-by-case basis, and I have to tell you I don't -- I 2 am reluctant to characterize anybody in terms of good or 3 bad. In terms of their intention, I don't know their 4 hearts.</p> <p>5 What I do know is that there are people 6 advocating for books to be restricted that I don't think 7 should be restricted. There are people raising 8 objections about books that I think are inaccurate 9 because they don't understand the books. They do not 10 know how to read graphic novels.</p> <p>11 They get characters wrong. They get ages 12 wrong. They get what's in the pictures wrong. They get 13 art history wrong.</p> <p>14 I don't see a person as bad for that. I 15 will say that -- or just simply, they reach conclusions 16 that I think are either unconstitutional, incorrect, or 17 unfair.</p> <p>18 (Simultaneous cross-talk ensues.)</p> <p>19 Q. (BY MR. BERG) Sorry. Go ahead.</p> <p>20 A. Yeah, so that's it.</p> <p>21 Do I -- do I -- do I rate? I don't rate 22 anything.</p> <p>23 Q. Do you rate them poorly?</p> <p>24 A. No, I don't rate them poorly.</p> <p>25 I just -- I don't rate them at all. I just</p>

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<p style="text-align: right;">Page 106</p> <p>1 do it on a case-by-case basis where something comes to</p> <p>2 me, and I say, you know, that's wrong; or that -- I</p> <p>3 don't agree with that conclusion. But that's not me</p> <p>4 saying this is better; this is worse; this is good; this</p> <p>5 is bad. That's kind of not how I do things.</p> <p>6 Q. Okay.</p> <p>7 MR. BERG: Could we go to the same</p> <p>8 document, Page 363?</p> <p>9 THE TECHNICIAN: (Complies.)</p> <p>10 MR. BERG: Bates No. CBLDF four zeros, 363.</p> <p>11 May be three zeros.</p> <p>12 Q. (BY MR. BERG) Okay.</p> <p>13 This appears to be an email conversation,</p> <p>14 correct?</p> <p>15 A. Yep.</p> <p>16 Q. And we are before your time. We're looking</p> <p>17 November 2012, correct?</p> <p>18 A. Yes. I was but a youth, my friend.</p> <p>19 Q. Glory days.</p> <p>20 So this appears to be sent from Betsy</p> <p>21 Gomez --</p> <p>22 A. Yes.</p> <p>23 Q. -- who lists herself as a web editor --</p> <p>24 A. Uh-huh.</p> <p>25 Q. -- for Comic Book LDF.</p>	<p style="text-align: right;">Page 108</p> <p>1 mature readers" --</p> <p>2 A. Uh-huh.</p> <p>3 Q. -- "Boom has Boom Town for young readers, et</p> <p>4 cetera --</p> <p>5 A. Uh-huh.</p> <p>6 Q. -- "I liked this to be an article that we add</p> <p>7 to our resources so informative and factual, the</p> <p>8 ratings, how the rating system started, et cetera. I've</p> <p>9 asked you to include movies and video games as a means</p> <p>10 of comparison, but it will also likely increase our</p> <p>11 audience to know how those involved and were</p> <p>12 implemented."</p> <p>13 A. Uh-huh.</p> <p>14 Q. Did I read that correctly?</p> <p>15 A. You did indeed.</p> <p>16 Q. And then Maren replies back -- wait. What we</p> <p>17 got? Yeah. Maren replies back (as read): "I shared my</p> <p>18 working document from Google Docs with you both. I kind</p> <p>19 of made the MPA a" -- "the villain because they kind of</p> <p>20 are IMO, so I hope it's okay to poke them a little.</p> <p>21 They're used to it. Let me know what you think."</p> <p>22 A. Uh-huh.</p> <p>23 Q. Did I read that correctly?</p> <p>24 A. Yep, yep.</p> <p>25 Q. So this appears to be 2012 email conversation</p>
<p style="text-align: right;">Page 107</p> <p>1 A. Yeah.</p> <p>2 Q. Do you know Betsy?</p> <p>3 A. Yes, I do.</p> <p>4 Q. Does she still work with you?</p> <p>5 A. Betsy does no long -- Betsy no longer works</p> <p>6 with us.</p> <p>7 Q. And it's sent to the aforementioned, Maren</p> <p>8 Williams and Charles Brownstein.</p> <p>9 A. Uh-huh.</p> <p>10 Q. Correct?</p> <p>11 A. Yes.</p> <p>12 Q. And the original email says (as read): "On</p> <p>13 your ratings article, would it be possible to get a just</p> <p>14 the facts, ma'am --</p> <p>15 A. Uh-huh.</p> <p>16 Q. -- "article on rating systems" --</p> <p>17 A. Uh-huh.</p> <p>18 Q. -- "basically describing existing rating</p> <p>19 systems -- movies, video games and comics -- for any</p> <p>20 publishers that have internal rating systems."</p> <p>21 A. Uh-huh.</p> <p>22 Q. (As read): "Comics -- even if the publisher</p> <p>23 doesn't have an explicit rating systems, they often</p> <p>24 imprints that designate which age group the book is</p> <p>25 intended for. For example, Marvel had Marvel Max for</p>	<p style="text-align: right;">Page 109</p> <p>1 regarding Comic Book LDF sort of exploring rating</p> <p>2 systems.</p> <p>3 A. Uh-huh.</p> <p>4 Q. Would that be a fair characterization?</p> <p>5 A. Well, they're describing -- what Betsy did</p> <p>6 there was trying to describe them.</p> <p>7 Q. Okay.</p> <p>8 A. So...</p> <p>9 Q. And so then Maren sends back a Google Docs,</p> <p>10 correct?</p> <p>11 A. Uh-huh.</p> <p>12 (Simultaneous cross-talk ensues.)</p> <p>13 A. I assume so from the email. We'll have to --</p> <p>14 (Simultaneous cross-talk ensues.)</p> <p>15 Q. (BY MR. BERG) Yeah, we'll get there.</p> <p>16 A. If that even exists.</p> <p>17 Q. Yeah, we'll get there.</p> <p>18 It appears the emails of the conversance</p> <p>19 have been redacted.</p> <p>20 Would you agree with that?</p> <p>21 A. To get rid of email addresses.</p> <p>22 Q. Without revealing attorney-client</p> <p>23 communications, do you know why those emails were</p> <p>24 redacted when you had disclosed the names of the people?</p> <p>25 A. I honestly don't recall.</p>

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<p style="text-align: right;">Page 110</p> <p>1 Q. Okay.</p> <p>2 A. I think -- I think -- I'm trying to remember.</p> <p>3 (Simultaneous cross-talk ensues.)</p> <p>4 Q. (BY MR. BERG) The only thing I can think of</p> <p>5 was, like, maybe --</p> <p>6 A. -- why. I'm literally trying to remember</p> <p>7 because people -- email's a funny thing. People in</p> <p>8 this -- in the world that I'm working in here -- and I'm</p> <p>9 going back and sort of -- I was -- I'm pretty adamant</p> <p>10 when I do something like this that I don't want emails</p> <p>11 disclosed. It's because people in my world get</p> <p>12 harassed.</p> <p>13 And to me, it's -- if I'm going to be</p> <p>14 disclosing something like this publicly and it was</p> <p>15 intended as a private communication, just as a blanket</p> <p>16 rule -- because in the emails that we have, it could be</p> <p>17 an email from personal email, whatever. I don't want</p> <p>18 them to be subject to people calling them names, trying</p> <p>19 to take action against them, so on and so forth.</p> <p>20 (Simultaneous cross-talk ensues.)</p> <p>21 Q. (BY MR. BERG) It certainly does appear to be a</p> <p>22 work email, though, correct?</p> <p>23 A. I don't have them in front of me, you know.</p> <p>24 Q. No. I mean, not the email addresses. The</p> <p>25 conversation appears to be work related, correct?</p>	<p style="text-align: right;">Page 112</p> <p>1 based on the context -- appears to have been connected</p> <p>2 to the article that you previously shown me.</p> <p>3 Q. Sorry. Can you -- I didn't quite follow that.</p> <p>4 A. You had an -- you showed me an article that</p> <p>5 talked about rating systems.</p> <p>6 Q. Oh, the books and content ratings.</p> <p>7 A. Yeah, exactly.</p> <p>8 And so it appears -- again, I wasn't privy</p> <p>9 to any of these discussions -- that the email from 2012</p> <p>10 or 2014 -- you looked at two of them -- had some sort of</p> <p>11 connection to that kind of discussion or that kind of</p> <p>12 article. It didn't appear to have any -- based on</p> <p>13 context clues, it didn't have any connection to the</p> <p>14 publication of stories that came out after those emails.</p> <p>15 Q. Okay.</p> <p>16 MR. BERG: Just for the record, the article</p> <p>17 we looked at is dated October 14th, 2014.</p> <p>18 A. Right, so...</p> <p>19 Q. (BY MR. BERG) But the -- what we're looking at</p> <p>20 right now is unrelated to ratings, correct?</p> <p>21 A. It's unrelated to those emails and to rating</p> <p>22 systems, so...</p> <p>23 Q. Okay.</p> <p>24 And I don't suppose you know whether the</p> <p>25 attachment to the ratings email was something that's</p>
<p style="text-align: right;">Page 111</p> <p>1 A. That does appear to be work related, yes.</p> <p>2 MR. BERG: Okay. Let's go to the next</p> <p>3 page, 36- --</p> <p>4 THE TECHNICIAN: (Complies.)</p> <p>5 MR. LAMBERT: Hey, Zach. I just want to</p> <p>6 make sure you know your camera's not aligned. I don't</p> <p>7 know if you realized that or not. If it's -- if that's</p> <p>8 on purpose, that's fine. I just want you to know.</p> <p>9 MR. BERG: Thank you. I appreciate that.</p> <p>10 I stood up to get a better view of the screen.</p> <p>11 Q. (BY MR. BERG) So what are we looking at? This</p> <p>12 appear to be the Google Doc. What are we looking at in</p> <p>13 this Google Doc?</p> <p>14 A. Yeah, my understanding -- again, this is before</p> <p>15 my time, so I found this in the context of responding to</p> <p>16 discovery -- is that they were putting together an</p> <p>17 anthology of previously published works.</p> <p>18 Q. Does this relate to the rating systems</p> <p>19 mentioned in the email?</p> <p>20 A. The email was from 2012. This project was</p> <p>21 2019, early 2020.</p> <p>22 Q. So this is not the email attachment?</p> <p>23 A. This is separate, yeah. Completely unrelated.</p> <p>24 The email you were just looking at, in</p> <p>25 context, would have been connected -- and this is just</p>	<p style="text-align: right;">Page 113</p> <p>1 been produced, correct?</p> <p>2 A. I honestly don't recall. I would have to dig</p> <p>3 through email and see if we even still have that, you</p> <p>4 know.</p> <p>5 Remember, you mentioned earlier the</p> <p>6 circumstances on which we had a previous departure,</p> <p>7 right?</p> <p>8 Q. (No response.)</p> <p>9 A. And I -- without going into details, there's a</p> <p>10 lot that I don't have access to.</p> <p>11 Q. Okay.</p> <p>12 MR. BERG: Could we go to the next page?</p> <p>13 THE TECHNICIAN: (Complies.)</p> <p>14 Q. (BY MR. BERG) So this has -- this shows the</p> <p>15 Excel document we were looking at on the previous page,</p> <p>16 and it showings columns F through M.</p> <p>17 A. Uh-huh.</p> <p>18 Q. Correct?</p> <p>19 A. Yeah.</p> <p>20 Q. And column F is titled "Contact question mark,"</p> <p>21 and everything is blacked out except for one row, which</p> <p>22 says "owned by CBLDF."</p> <p>23 A. Yes.</p> <p>24 Q. Is that correct?</p> <p>25 A. Correct.</p>

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<p style="text-align: right;">Page 114</p> <p>1 Q. And without revealing attorney-client 2 communication, do you know why this was redacted? 3 A. Uh-huh. Yes, I do. 4 Q. And why is that? 5 A. And, again, this is -- with -- making no -- you 6 know, everything else we're talking about is 7 attorney-client privilege. This is just my insistence 8 because I don't want to dox our creators. I don't want 9 to give their addresses or emails. 10 You know, they -- people are nasty. This 11 is a world where, you know, people show up at other 12 people's doorsteps. They send them -- they send them 13 letters. They bombard -- they sign them from mailing 14 lists. They bombard them with bad emails. And I don't 15 want to -- I didn't feel it was a -- required in this 16 case to include people's addresses or emails. 17 Q. Okay. 18 MR. BERG: Could we go to the next page, 19 please? 20 THE TECHNICIAN: (Complies.) 21 Q. (BY MR. BERG) And same thing here. You just 22 -- 23 (Simultaneous cross-talk ensues.) 24 A. Blank it out -- 25 (Simultaneous cross-talk ensues.)</p>	<p style="text-align: right;">Page 116</p> <p>1 have to refresh my memory -- but they probably just did 2 a notice to who owns the copyright and the particular 3 work. 4 Q. (BY MR. BERG) And all -- this will be a 5 conversation after the depo. Just for the record, if 6 you have to produce documents in the future, we would be 7 open to some sort of confidentiality agreement where 8 these documents with sensitive information could be 9 stamped for extra protection. 10 A. Appreciate that. I certainly appreciate that. 11 I do live in a world where people have 12 leaked that information. I prefer not to have the 13 information out in the wild to begin with. But -- but 14 if you had a blank -- if you had a blanket agreement 15 beforehand that documents would have been produced under 16 seal, I think that would have been a different 17 conversation. 18 MR. BERG: Could we go to the same 19 document, Page 11, please? 20 THE TECHNICIAN: (Complies.) 21 Q. (BY MR. BERG) This is an August 9th, 2019, 22 document by CBLDF titled "Nine Great Graphic Novels to 23 Gear Up for Back to School." And at the bottom of the 24 page, it says "elementary readers"; is that correct? 25 A. That's what it says, yes.</p>
<p style="text-align: right;">Page 115</p> <p>1 Q. (BY MR. BERG) No dox. 2 A. Exactly. No dox. 3 MR. BERG: This page, for the record, shows 4 columns N through S, and the column titles are "street 5 address," "city," "state," "zip," "copyright line," and 6 "street address" again. 7 A. Uh-huh. 8 Q. (BY MR. BERG) And it's been all redacted, 9 correct? 10 A. Yep. 11 Q. What is copyright line? 12 A. If you want copyright information for the 13 individual stories, I can try to dig that -- I can dig 14 that out in the -- I just don't recall that in this 15 particular one, so I can go back and look at the 16 document, but I just don't -- I literally don't recall. 17 Q. And -- 18 (Simultaneous cross-talk ensues.) 19 A. Assuming -- I'm assuming -- I'm assuming it is 20 -- like I know when I -- and this is just an assumption 21 here since it's been a few weeks since I pulled this 22 document. But I know when I do my diligence on any sort 23 of work, I will look and see who owns the copyright, and 24 I even go a step further and I look to see if it's been 25 registered. But, here, they probably just -- and I'd</p>	<p style="text-align: right;">Page 117</p> <p>1 Q. How do you determine what books should be 2 elementary -- for elementary readers? 3 A. With the caveat here that I was not part of 4 this -- and I want {sic} to understand that I was not 5 part of this decision. 6 But there are a number of decisions that go 7 into determining whether something is for elementary 8 readers. First of all, you'll notice in the description 9 of this for elementary readers, what it does not say. 10 This does not say nonsexual books. This does not have 11 the word "sex" in the title. It does not brand the 12 book, refer to sex in any way. So we're dealing with 13 apples and oranges here between what's done here and 14 what's done in HB 900. Two different things. 15 You're doing what's the logical fallacy 16 that's referred to as sort of modern dally in some 17 circles. You're saying it's reasonable for one thing, 18 but that means then you're going to -- more general 19 proposition, and then you're going try to defend 20 indefensible. 21 So elementary readers here. A number of 22 factors, and we'll go into it. Age level is one. In 23 terms of reading level is going to be one aspect, I 24 assume. 25 I would have to go through -- and we can</p>

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<p style="text-align: right;">Page 118</p> <p>1 sit here and do that if you would like. You wanted</p> <p>2 books that -- things that talked about this. I gave</p> <p>3 them to you in terms of articles, and I also referred to</p> <p>4 our website generally.</p> <p>5 I don't know how they made the decisions,</p> <p>6 but they're going to talk about what is the vocabulary</p> <p>7 used; what is the visual density of an image or a visual</p> <p>8 density or textural density of a particular panel? They</p> <p>9 may look at certain themes. They may look at length.</p> <p>10 They could look at, you know, sort of all sorts of</p> <p>11 context of different variables that could be -- whether</p> <p>12 it's political. They can look at whether it's -- they</p> <p>13 could look at the types of the maturity of the sexually</p> <p>14 discussion. They can look at the maturity of violence</p> <p>15 and the way violence...</p> <p>16 All these sort of things that as a</p> <p>17 constitutional standard may be inappropriate to impose a</p> <p>18 -- that. But in terms of recommending and understanding</p> <p>19 how different communities and different standards and</p> <p>20 different people market to different demographics that</p> <p>21 fitting in under that, there's just a lot of traits. A</p> <p>22 lot of characteristics go in determining whether</p> <p>23 something's for elementary readers and -- and not.</p> <p>24 You know, when I was -- when I was eight</p> <p>25 years old, I was reading "All the President's Men." You</p>	<p style="text-align: right;">Page 120</p> <p>1 A. I honestly -- again, I don't know from 2019. I</p> <p>2 was doing other things, and so I don't know -- I don't</p> <p>3 know what they did.</p> <p>4 I do know that, you know, when I talk about</p> <p>5 it now or refer to what publishers publish -- you know,</p> <p>6 there's ALA guides. They have the American Library</p> <p>7 Associations. If things are publishers, I really prefer</p> <p>8 to stick with publishers since they know the work best.</p> <p>9 I don't -- I don't know how they made these</p> <p>10 decisions. And, again, my guess is that -- for example,</p> <p>11 in this instance "Noodleheads See the Future," I'm</p> <p>12 guessing it had a lot to do with the visual and textual</p> <p>13 sophistication of the work because I really -- when it</p> <p>14 says "Grades, first through fourth," I suspect it's a</p> <p>15 lot to do with that. I doubt that it is anything to do</p> <p>16 with the Noodleheads having or not having sex. That's</p> <p>17 just my supposition, though, because I haven't read</p> <p>18 Noodleheads.</p> <p>19 Q. Is sexual content one of the factors in grade</p> <p>20 range?</p> <p>21 A. I honestly -- again, I did not do this. I</p> <p>22 don't know how they calculated this.</p> <p>23 Q. Well, let's -- let's talk about --</p> <p>24 (Simultaneous cross-talk ensues.)</p> <p>25 A. You're --</p>
<p style="text-align: right;">Page 119</p> <p>1 know, I was reading Marshall McLuhan "Understanding</p> <p>2 Media" when I was seven, you know. My elementary</p> <p>3 readers were somebody else's in terms of the way that my</p> <p>4 school treated me. So there's just lots of things, and</p> <p>5 it's very context dependent, and depending on whose</p> <p>6 doing it.</p> <p>7 MR. BERG: Can we go to the next page,</p> <p>8 please?</p> <p>9 THE TECHNICIAN: (Complies.)</p> <p>10 Q. (BY MR. BERG) So this is an example of an</p> <p>11 elementary readers -- "Noodleheads See the Future" --</p> <p>12 A. Uh-huh.</p> <p>13 Q. -- by Ted Arnold, Martha Hamilton, and Mitch</p> <p>14 Weiss, correct?</p> <p>15 A. I will say correct, and it delights me to no</p> <p>16 end to have "Noodleheads" in a deposition.</p> <p>17 Q. It's no "Coneheads" but it'll do.</p> <p>18 So the -- below the picture of the book,</p> <p>19 has the title again, authors again; and it says (as</p> <p>20 read): "Age range, 6 to 9 years old. Grade range,</p> <p>21 first through fourth," correct?</p> <p>22 A. Yeah.</p> <p>23 Q. Are these determinations that Comic Book LDF</p> <p>24 are coming up with in-house, or are you taking this from</p> <p>25 a vendor or an outside party?</p>	<p style="text-align: right;">Page 121</p> <p>1 Q. (BY MR. BERG) Let's talk about --</p> <p>2 (Simultaneous cross-talk ensues.)</p> <p>3 A. Please don't --</p> <p>4 (Simultaneous cross-talk ensues.)</p> <p>5 A. Please don't tell me you're going to do a</p> <p>6 hypothetical about Noodleheads having sex, or I just</p> <p>7 might have to take a break and laugh for a bit.</p> <p>8 Q. (BY MR. BERG) No. That's even above -- beyond</p> <p>9 me.</p> <p>10 Does Comic Book LDF still do these sort of</p> <p>11 things where --</p> <p>12 A. No.</p> <p>13 Q. -- they have guides with age range and grade</p> <p>14 range?</p> <p>15 A. We have legacy information on the site, and I</p> <p>16 anticipate doing, yeah, sort of revising this kind of</p> <p>17 thing in the future. But if we do it in the future, it</p> <p>18 will only have what publishers designate. It won't have</p> <p>19 anything that we have in terms of internal standards.</p> <p>20 I don't know -- I literally don't know what</p> <p>21 they did back then. I don't have any evidence. I</p> <p>22 looked.</p> <p>23 As far as I know, this could be publishers.</p> <p>24 It could have been a teacher who did this and was going</p> <p>25 by some sort of standard about vocabulary level like Dr.</p>

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<p style="text-align: right;">Page 122</p> <p>1 Seuss did when he was determining what words to use in</p> <p>2 his books, and that was all sort of words that are</p> <p>3 associated with certain ages. I simply do not know.</p> <p>4 Q. And you said that now since you've been in</p> <p>5 charge, you use publisher information and ALA ratings;</p> <p>6 is that correct?</p> <p>7 A. Publish -- I go -- I go by what -- how the</p> <p>8 publisher characterizes it. The ALA does its own thing.</p> <p>9 Q. Okay. Publishers.</p> <p>10 A. And as far as I know, the ALA may go by what</p> <p>11 the publishers say. I just don't know the -- I just</p> <p>12 don't what's in their system. I just know that I've</p> <p>13 seen stuff online, and I've seen them reference ages,</p> <p>14 and I just -- I don't know because I haven't asked them.</p> <p>15 I prefer going by what publishers do, and</p> <p>16 then -- and then, you know, people can make their own</p> <p>17 judgment call based on their reading of the text.</p> <p>18 Q. Another hypothetical: Say that HB 900 and</p> <p>19 upheld and goes into effect. If publishers start rating</p> <p>20 the books for sale in Texas as either no rating,</p> <p>21 sexually relevant, or sexually explicit, will Comic Book</p> <p>22 LDF likewise rely on publisher ratings for that purpose</p> <p>23 as well?</p> <p>24 MR. LAMBERT: Objection, form.</p> <p>25 A. I think if we get -- if there's a system that</p>	<p style="text-align: right;">Page 124</p> <p>1 MR. LAMBERT: Objection, form.</p> <p>2 A. If it's the law and it's been upheld either by</p> <p>3 the Supreme Court or in the Fifth Circuit with a cert</p> <p>4 denied by the Supreme Court that you have to have this</p> <p>5 rating system, I wouldn't advise that people break the</p> <p>6 law.</p> <p>7 Q. (BY MR. BERG) Understood.</p> <p>8 My question's a little bit different. As</p> <p>9 far as the rating system, would you use a publisher's</p> <p>10 rating if they used ratings of no rating, sexually</p> <p>11 relevant, and sexually explicit? Would you use those</p> <p>12 ratings in the same way you would use the ratings for</p> <p>13 the books we're looking at now?</p> <p>14 MR. LAMBERT: Objection, form.</p> <p>15 A. Now, you're asking me to project something into</p> <p>16 the future. And, here, which is, again, a situation</p> <p>17 with which I disagree.</p> <p>18 I find that this particular -- it's like --</p> <p>19 there was a Comics Code in comics that many -- the vast</p> <p>20 majority of people in comics find to have been</p> <p>21 unconscionable for the harm that it did to the industry.</p> <p>22 I will -- you know, you make reference to books that had</p> <p>23 the Comics Code seal on it, but that doesn't mean I</p> <p>24 approve of the existence of the Comics Code. I'm just</p> <p>25 trying to imagine a situation where I personally am</p>
<p style="text-align: right;">Page 123</p> <p>1 brands things as sexually explicit/sexually relevant, I</p> <p>2 got to tell you even if it's upheld, I'm -- I just -- I</p> <p>3 find that -- I find that rating system reductionistic</p> <p>4 and inappropriate. It's not something I would ever</p> <p>5 endorse.</p> <p>6 Reducing -- reducing a book to sex is -- is</p> <p>7 like I said, it shocks the conscious. It's like --</p> <p>8 think about -- think about all the great works of</p> <p>9 literature. You could strip out a paragraph. All the</p> <p>10 great images you could strip out and characters.</p> <p>11 I mean, do you want -- do you want somebody</p> <p>12 taking a look at Adam and Eve in the garden by</p> <p>13 Michelangelo and saying that's sexually explicit because</p> <p>14 the consensus of scholars is that it's a thinly</p> <p>15 disguised depiction of oral sex? You know, I would --</p> <p>16 anybody required to stamp any art history book with</p> <p>17 sexually explicit or restrict access into the libraries</p> <p>18 because it contains that or contains the work by</p> <p>19 Picasso. I find that an unconscionable system in the</p> <p>20 United States.</p> <p>21 Q. (BY MR. BERG) I understand you find the idea</p> <p>22 abhorrent.</p> <p>23 But for the purpose of the theoretical,</p> <p>24 would you use the publishers' ratings on that issue to</p> <p>25 sell books to Texas schools?</p>	<p style="text-align: right;">Page 125</p> <p>1 designing a thing would include those ratings without</p> <p>2 some kind of caveat and just say that this is assuming</p> <p>3 -- and I don't think it will, and I don't think it</p> <p>4 should pass constitutional muster in Texas, but let's</p> <p>5 say -- weirder things have happened in law. You know,</p> <p>6 Eugenics was approved by the Supreme Court for a period</p> <p>7 of time. Mandatory sterilization. So we have a weird</p> <p>8 history in terms of constitutionality.</p> <p>9 So suppose that these rating system became</p> <p>10 kind of the mass censorship -- mandatory sterilization</p> <p>11 of censorship for a temporary period of time or --</p> <p>12 remember, you know, it was -- Supreme Court said when I</p> <p>13 was law school that you could through gay people in</p> <p>14 jail. Then it reversed that ten years later.</p> <p>15 So suppose we have this system where an</p> <p>16 unconscionable rating system is required. If I had to,</p> <p>17 you know, advise people on selling books to Texas, have</p> <p>18 to acknowledge that. I would disagree with that, and I</p> <p>19 would fight against it; but I would not endorse it.</p> <p>20 Q. (BY MR. BERG) When you say you would not</p> <p>21 endorse it, are you saying that, no, you would not use</p> <p>22 publishers' ratings to sell the books to Texas public</p> <p>23 schools?</p> <p>24 MR. LAMBERT: Objection, form.</p> <p>25 A. I thought I made it very clear that I wouldn't</p>

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<p style="text-align: right;">Page 126</p> <p>1 recommend that anybody violate whatever the law was at</p> <p>2 that particular time. If they were trying to sell</p> <p>3 something to Texas school {sic} and that had passed</p> <p>4 constitutional muster, even though I would think that's</p> <p>5 a serious constitutional mistake along the level of</p> <p>6 forced sterilization or saying that people should be</p> <p>7 thrown in jail for having same-sex relationships, which</p> <p>8 is no longer the law, hasn't been for 20 years.</p> <p>9 Q. (BY MR. BERG) I mean, we all have Supreme</p> <p>10 Court cases we don't like but --</p> <p>11 A. Right.</p> <p>12 Q. -- we're getting left field.</p> <p>13 Let me break this down. I think I asked</p> <p>14 too expansive of a question.</p> <p>15 A. You did indeed.</p> <p>16 Q. Hypothetical --</p> <p>17 (Simultaneous cross-talk ensues.)</p> <p>18 A. That seems to be something that goes on with HB</p> <p>19 900. Way too expansive.</p> <p>20 Q. (BY MR. BERG) Well played.</p> <p>21 So in this hypothetical, would Comic Book</p> <p>22 LDF continue to sell books to Texas public schools?</p> <p>23 A. If I had a teacher at a convention said that</p> <p>24 they were -- or they were a librarian at a convention</p> <p>25 and said they were from Texas and they want to buy</p>	<p style="text-align: right;">Page 128</p> <p>1 suffer further by denying them the ability to sell that</p> <p>2 book into Texas. They should at least be able to make</p> <p>3 some money in Texas after losing a substantial amount of</p> <p>4 their marketplace to concern over these particular</p> <p>5 ratings.</p> <p>6 Q. So is that a "yes"?</p> <p>7 A. I gave you the answer.</p> <p>8 Q. Can you clarify whether that's a "yes"?</p> <p>9 A. I told -- I told you that if -- and, again,</p> <p>10 you're doing a hypothetical here. So I don't know the</p> <p>11 nature -- I don't know the book. I don't know the</p> <p>12 consequences of which somebody is -- the circumstances</p> <p>13 which somebody is asking me.</p> <p>14 But I'm not going to rule out selling books</p> <p>15 to Texas. But assuming they follow the law -- whatever</p> <p>16 it is in Texas at that time -- because from my</p> <p>17 perspective, publishers -- at that point, the publishers</p> <p>18 and creators and distributors will have suffered enough</p> <p>19 that I shouldn't impose a complete ban on the state.</p> <p>20 Q. So to the extent that you would sell to Texas,</p> <p>21 would you use the publisher ratings --</p> <p>22 MR. LAMBERT: Objection, form.</p> <p>23 Q. (BY MR. BERG) -- on sexual content?</p> <p>24 A. All right. I'm an attorney, okay? And I</p> <p>25 advise CBLDF in that capacity. And if I were an</p>
<p style="text-align: right;">Page 127</p> <p>1 something from our table, you know, and they were going</p> <p>2 to put it in their library, you know, and they would put</p> <p>3 me in the standpoint of -- from the framework of being a</p> <p>4 vendor, you know, then at some point, if that were the</p> <p>5 law and it were firmly established, then</p> <p>6 incontrovertibly that's law that predicated at that</p> <p>7 time, I'm responsible for following that law.</p> <p>8 Q. So is that a "yes" you would still sell to</p> <p>9 Texas school?</p> <p>10 (Simultaneous cross-talk ensues.)</p> <p>11 A. Because if it's sexually explicit, I understand</p> <p>12 the rule is I couldn't. And if it's sexually relevant,</p> <p>13 I understand the rule is I could. And if it's not</p> <p>14 rated, no problem, right? So...</p> <p>15 Q. (BY MR. BERG) Okay.</p> <p>16 I'll -- if you're worried about sexually</p> <p>17 explicit, let me rephrase the question.</p> <p>18 Would you still sell books that were rated</p> <p>19 either no rating or sexually relevant to Texas schools?</p> <p>20 MR. LAMBERT: Objection, form.</p> <p>21 A. I would say that the publishers and the</p> <p>22 creators and the distributors, anybody that got us this</p> <p>23 book that we're selling have suffered enough. And if</p> <p>24 they've managed to have a book survived to the point</p> <p>25 where it could be sold, that I would not want them to</p>	<p style="text-align: right;">Page 129</p> <p>1 attorney, I would say okay, well, if we are selling a</p> <p>2 book to a librarian, some kind of educator,</p> <p>3 administrator, whatever in Texas, and they have said</p> <p>4 they're going to be putting this in the school, not just</p> <p>5 for their personal use, I would argue, well, you know,</p> <p>6 there's an argument here that we would fall under the</p> <p>7 description of a vendor. And, therefore, in terms of</p> <p>8 risk management and compliance, we would have to make</p> <p>9 sure that that was rated in a way that had been upheld</p> <p>10 by the courts.</p> <p>11 You know, you're -- I'm trying -- I'm not</p> <p>12 quite sure what the intent behind this question is, and</p> <p>13 I'm not quite sure where you want to go with it, but</p> <p>14 it's -- I disagree with the law. I think it -- even if</p> <p>15 the court upheld it, I think it would be a reprehensible</p> <p>16 law with serious financial harm to everybody including</p> <p>17 us particularly, but I would still -- if there's a book</p> <p>18 that was salable to Texas, as long as I made sure from a</p> <p>19 compliance perspective that we were complying with the</p> <p>20 law applicable to vendors, I wouldn't tell people to</p> <p>21 say, oh, it's Texas. We don't sell books to Texas.</p> <p>22 Q. Okay.</p> <p>23 So, yeah, I'm -- so I think that's the</p> <p>24 first part of the question.</p> <p>25 The second part -- assuming that you would</p>

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<p style="text-align: right;">Page 130</p> <p>1 comply with the law and follow the law among the ways in 2 which you could come up with a rating and comply with 3 the law, would you choose to proceed with using the 4 publisher's rating to the extent it existed, or would 5 you do something else to come up the rating? 6 MR. LAMBERT: Objection, form. 7 A. I just don't know what you're talking about. I 8 don't know what your hypothetical is. 9 I am talking about compliance with a Texas 10 person. And from my understanding -- and, please, 11 elaborate. If you have an understanding of HB 900 12 that's different, I need to know. It's hard to 13 understand H- -- a lot of HB 900. 14 Q. (BY MR. BERG) So my question assumes that 15 you're complying with the law. 16 A. Okay. 17 Q. And that in selling the books that the books 18 will be rated. 19 I'm asking would you come by that rating 20 through using the publisher's rating, or would you come 21 up with the rating some other way like a third-party 22 vendor? 23 A. It would be a combination of the publisher's 24 rating. Probably at this point ask several lawyers and 25 educators to review it just to make sure that it's not</p>	<p style="text-align: right;">Page 132</p> <p>1 "Noodleheads" best for this range of kids versus a legal 2 compliance to make sure that I, as a vendor, are 3 minimizing the risk and risk of my clients under Texas 4 law. That's just a different kind of analysis. And as 5 I lawyer -- and I have to -- I have to -- honestly, I 6 have to talk to rest of my board about this. But I, as 7 a lawyer, you know, whatever I do, I tend not to rely 8 solely on the opinions of third parties. I always have 9 to look at it myself. 10 MR. BERG: Can we go to Page 16 of this 11 document? 12 THE TECHNICIAN: (Complies.) 13 Q. (BY MR. BERG) We have "Anne Frank's Diary: 14 The Graphic Adaptation" adopted by Ari Folman, 15 illustrations by David Polonsky? 16 A. Uh-huh. 17 Q. My question -- 18 A. It's digital, yeah {sic}. 19 Q. It says "Age range, 12-plus" -- 20 A. Uh-huh. 21 Q. -- and then "Grade range, third through seven." 22 MR. BERG: And, then, could we go to 23 Page 19, please? 24 THE TECHNICIAN: (Complies.) 25 Q. (BY MR. BERG) So this is "Strange Fruit</p>
<p style="text-align: right;">Page 131</p> <p>1 my reading -- just my reading. It would be an expensive 2 and time-consuming process. You know, just as I would 3 do doing diligence in any kind of transaction where I 4 am -- at this point, it's like -- at this point, it's 5 like applying with Customs' ratings -- you know, 6 Customs' rules for determining what can and cannot be 7 imported, what can and cannot be exported, how they're 8 characterized, you know. 9 And so I would have to look at this and 10 determine, okay, where is this book going to fall? What 11 would the rating be? The publisher's is this. But 12 ultimately as a vendor, I'm responsible for selling 13 this, and it could have implications for the people to 14 whom I sell, and they may want to buy from me again. So 15 I'm going to need to do an analysis with second and 16 third opinions as to how it should be rated. 17 And then -- then there are other factors 18 that go into, you know, determining where the book is 19 sold, and that's going to be largely up to the educator, 20 which is -- which is, you know, they have to think about 21 language level and what, you know, what's the reading 22 level of kids in their classroom, and all those sort of 23 things that come into play. 24 But if I am doing legal -- there's a 25 difference between doing this sort of thing</p>	<p style="text-align: right;">Page 133</p> <p>1 Volume II: More Uncelebrated Narratives from Black 2 History" by Joel Christian Gill. 3 So this "Strange Fruit" is in high school 4 readers; the Anne Frank one is in middle grade readers. 5 They both say age range 12-plus. "Strange Fruit" says 6 grade range 8 through 12. 7 A. Uh-huh. 8 MR. BERG: And then if we could go back to 9 Page 16, please. 10 THE TECHNICIAN: (Complies.) 11 Q. (BY MR. BERG) The grade range for "Anne 12 Frank's Diary: The Graphic Adaptation" is third through 13 seven. 14 So if you know, why would an age range be 15 the same but a grade range be different? 16 A. I have no -- 17 MR. LAMBERT: Objection, form. 18 A. Yeah, I have no idea. 19 I didn't -- I didn't write this. I don't 20 know if that's a typo. I don't know if that's based on 21 a publisher's description. I didn't do that. 22 And seeing that discrepancy, I'll take a 23 look. It a different -- it's a different -- again, 24 grade range, age range is a different assessment from 25 just purely judging an image on the basis of sexual</p>

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<p style="text-align: right;">Page 134</p> <p>1 content. Completely -- I mean, they're just different 2 analyses. They may have some points of intersection, 3 but just a different kind of -- you know, one's an 4 holistic analysis and another one isn't. The HB 900 5 isn't a holistic analysis at all. 6 But I -- honestly, I didn't write this. I 7 don't know if it's a typo. I don't know why they have 8 -- I don't know if it's a publisher thing. I'll just 9 have to go back and take a look. 10 Glad that you flagged, though. I think 11 it's -- I'll try to figure it out just now that I see 12 the inconsistency. I don't know. I literally don't 13 know. 14 Q. (BY MR. BERG) Yeah, I don't know enough to 15 know that -- whether it's inconsistent or not is -- it 16 struck me as interesting, and I wanted to see if you had 17 a -- 18 A. It is interesting. I just -- I just don't 19 know. 20 Q. Okay. 21 A. I haven't -- I haven't yet gone through a 22 comprehensive revisiting of everything on the website, 23 particularly, older guides, and that's something that I 24 have in my mind to do. But I'm -- you know, we're two 25 people.</p>	<p style="text-align: right;">Page 136</p> <p>1 THE TECHNICIAN: (Complies.) 2 MR. BERG: And we'll mark this as Exhibit 3 F. 4 (Exhibit F marked.) 5 MR. BERG: Could we go to Page 2, please? 6 THE TECHNICIAN: (Complies.) 7 MR. BERG: Go to Page 4, please. 8 Q. (BY MR. BERG) Okay. So the Panel Power has 9 book records, and the fifth column appears to be an 10 age-plus rating for what age is appropriate for the 11 book; is that right? 12 A. Uh-huh. 13 (Simultaneous cross-talk ensues.) 14 A. Let's go back to Page 1 so I can see the header 15 on the column. 16 MR. BERG: Can we go to -- yeah, Page 2, 17 please? 18 THE TECHNICIAN: (Complies.) 19 A. It's good to refresh my memory. Yep. Age 20 group. So there you go. 21 Q. (BY MR. BERG) So the age group number in that 22 column, do you know whether that is also a publisher's 23 rating or something that Comic Book LDF did internally? 24 A. So, you know, just in terms of context clues -- 25 and I think this is important as a rule of thumb when</p>
<p style="text-align: right;">Page 135</p> <p>1 Q. And many volunteers. 2 A. And volunteers. 3 MR. BERG: We go to page -- 4 A. Volunteers, none of whom have been involved yet 5 in website redaction. Just so you know that. 6 Q. (BY MR. BERG) Sorry. Involved in what? 7 A. None of the volunteers thus far have been 8 involved in reviewing the website, so... 9 Q. Okay. 10 A. So volunteering at a booth is different from 11 reviewing the website. Equally valued, but it's a 12 different task. 13 Q. Are you familiar with Panel Power? 14 A. Yeah. Yeah, I'm familiar with Panel Power. 15 Q. I can bring that up if it's helpful. It's -- 16 A. It would be great. Anything we talk about here 17 I want to see because there's a lot of material that 18 this organization. 19 (Simultaneous cross-talk ensues.) 20 THE STENOGRAPHER: Gentlemen, this is 21 becoming very conversational. Please keep it to 22 question and answers for clarity of the record. 23 MR. BERG: My apologies. 24 Jeremy, would you please bring up Panel 25 Power CBLDF website?</p>	<p style="text-align: right;">Page 137</p> <p>1 analyzing any document like this -- one of the first 2 things I would do is look at the asterisk and then go to 3 the asterisks where it says (as read): "Age groups 4 based on publisher classifications. If no age group is 5 listed, the publisher did not specify an intended 6 audience. So consult your librarian or comic bookseller 7 for intended recommendations." 8 Having not prepared the list, I'm going to 9 go by the asterisk. 10 Q. So publisher. 11 A. So publisher. 12 MR. BERG: Can we go back to CBLDF 1 13 through 368 document, please? 14 THE TECHNICIAN: (Complies.) 15 MR. BERG: Can we go to Page 31? 16 THE TECHNICIAN: (Complies.) 17 Q. (BY MR. BERG) So this is -- got the CBLDF logo 18 or a logo, and then it says (as read): "Best" -- "The 19 Best Defense: Retailer Resource Guide, Comic Book Legal 20 Defense Fund"; is that correct? 21 A. Yes. Correct. 22 MR. BERG: Could we go to Page 35, please? 23 THE TECHNICIAN: (Complies.) 24 Q. (BY MR. BERG) This is a guide or essay. It's 25 titled, "'Marketing to Kids: An Introduction' by Andrew</p>

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<p style="text-align: right;">Page 138</p> <p>1 Neal, Chapel Hill Comics." 2 A. Uh-huh. 3 Q. Are you familiar with this document? 4 A. I believe I submitted this document. 5 MR. BERG: Could we go to the next page, 6 please? 7 Q. (BY MR. BERG) Under "Customer Service for 8 Kids," in the first paragraph it reads (as read): 9 "There are still" -- or sorry. 10 MR. BERG: Can we zoom in on the first 11 paragraph under "Customer Service for Kids and Parents," 12 please, starting "as mentioned above..." 13 THE TECHNICIAN: (Complies.) 14 Q. (BY MR. BERG) So starting from there, it says 15 (as read): "There are also still plenty of folks who 16 assume that all comics are kids comics, so making sure 17 they know that not everything in the store is for kids 18 is usually a good idea. I always tell parents that I'm 19 available if they have any questions about age 20 appropriateness on any of the merchandise in the store. 21 This all goes a long way towards calming parents who are 22 nervous about the media their kids consume." 23 A. Uh-huh. 24 Q. Did I read that correctly? 25 A. You did indeed.</p>	<p style="text-align: right;">Page 140</p> <p>1 buy a book often undercover. Actually, it wasn't really 2 people doing complaints. They'd send undercover agents 3 in to buy a book, and then they say, aha, you have this 4 book in the store and kids can access it; and, 5 therefore, it's harmful to minors. Go directly to jail. 6 Do not pass go. And so we have to advise people. 7 That's the backdrop in which we're advising people here. 8 This goes a little further and also just 9 how to manage reputation. Make sure that somebody just 10 doesn't say, oh, my God, this book had this content it 11 in, and then it -- so it shouldn't be in kids, and those 12 concepts are influx. They really are influx in ways 13 that, you know, what was considered to be for kids 25 14 years ago and what's considered to be for kids now is 15 different. It's because there are evolving 16 sensibilities what most parents and most community 17 members see. So I would -- I would have to really take 18 a look at, you know, at how the retailer was assessing 19 their market. 20 And, again, it goes into -- it could go -- 21 the sexual content could be part of it. May not 22 necessarily be determinative, could be violence, could 23 be themes. It could be -- again, the types of image 24 involve, the types of grade level of the readers. A lot 25 of things -- the publisher characterization. A lot of</p>
<p style="text-align: right;">Page 139</p> <p>1 Q. What sort of things would make a comic not a 2 kids' comic? 3 A. Lots of different factors, and it depends on 4 how they -- you know what they define -- it depends on 5 how -- it depends on the -- on how they understand their 6 market and what the personal, you know, beliefs of the 7 proprietor are, how they relate to publisher's 8 characterizations, what their clients view as kids' 9 comics. I think a lot of stuff is going to go into 10 that. 11 I'd be interested just to speak to the 12 retailers here to determine what they -- what they see 13 as going into kids' group. You know, there's -- there's 14 a legal analysis, and then there's a market analysis; 15 and they're two different things. 16 Q. When Mr. Neal says that (as read): "Making 17 sure that parents know that not everything in the store 18 is for kids is usually a good idea," what does he mean? 19 A. He means that they're going to be -- you know, 20 when -- parents have different sensibilities, and, you 21 know, particularly if you are at this age where people 22 have an item on Nextdoor or Yelp or Google reviews or 23 something like that, I think one of the things you want 24 to be -- back when we were founded, one of the things 25 you were concerned about would be that somebody would</p>	<p style="text-align: right;">Page 141</p> <p>1 things come into play. Relative tolerance of the area. 2 I mean, just lots of things factor in. 3 Q. Would sexual content be one of the things 4 factored in? 5 A. I think that any -- you know, when you're doing 6 a store, people are thinking about that. They're not 7 rating the books. 8 But, again, they're doing risk management. 9 They don't -- you know, they -- they are a number of 10 retailers out there. Some retailers are totally 11 copacetic, and they think that everything's cool and 12 they understand that the market -- they let parents make 13 the decisions -- and you know. And then others as -- 14 you know, people two people kissing knocks them out. It 15 really just depends on their sort of sensibilities. 16 So a person -- a retailers, who's assessing 17 this is going to make these decisions based on a lot of 18 factors of which sexuality is one, but I can tell you I 19 don't know, you know. When it comes to making these 20 distinctions among these different types books, 21 you're -- a lot of it isn't going to be, you know, these 22 are -- if it's for teenagers, it's a sex book. You 23 know, that's not how it's done. 24 We don't have, you know, sexually explicit, 25 sexually relevant. These are -- these are sort of</p>

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<p style="text-align: right;">Page 142</p> <p>1 idiosyncratic Texas ratings. They're not something I 2 know sort of in the mass marketplace. 3 And, again, a lot of it's risk management. 4 They just -- they either are concerned about -- they 5 used to be -- 20 to 25 years ago -- concerned about 6 getting arrested. Although, that concern has come back 7 in the past five years, but they're also concerned about 8 somebody blast -- putting them on blast in the community 9 on some sort of message board. 10 Q. Earlier you said that Comic Book LDF doesn't 11 track sales of its members. 12 Does Comic Book LDF track the types of 13 contracts that its members agree to with schools and 14 their terms? 15 A. If anybody -- if anybody came to us with a bill 16 of sale, an invoice, a contract and said, hey, could you 17 take a look at this? I would certainly look at it. 18 Q. Have you looked at many from Texas? 19 A. I know there've been, you know, situations 20 where people are concerned about books being sold in 21 Texas or books being removed in Texas. But in terms of 22 any contracts, I haven't looked at a contract there. 23 Q. Does Comic Book LDF advise school libraries to 24 stock comics that contain sexual material? 25 A. My -- and this is, again, I have to go through</p>	<p style="text-align: right;">Page 144</p> <p>1 saying every -- every library should books with sex in 2 it, which I think is kind of an unfair characterization 3 of what I'm saying. 4 But, you know, I do think that every 5 library should have books of good, educational, 6 literary, artistic quality and that have educational 7 value, and a number of those happen to have sexual 8 elements. 9 THE STENOGRAPHER: Counsel, when you get to 10 a stopping point, I'd like to take a break, please. 11 MR. BERG: Yeah, let's take -- let's go off 12 record, please. 13 THE VIDEOGRAPHER: We are going off the 14 record. The time is 13:00 p.m. Central. 15 (A break was taken from 1:00 p.m. to 16 1:23 p.m.) 17 THE VIDEOGRAPHER: We are back on the 18 record. This is Media No. 2 in the deposition of Jeff 19 Trexler. The time is 13:23 p.m. Central and we are -- 20 or -- and you can begin, counsel. 21 MR. BERG: Thanks so much. 22 Would you please bring up Exhibit E, the 23 CBLDF 1 to 368, please, and go Page 40. 24 THE TECHNICIAN: (Complies.) 25 Q. (BY MR. BERG) So this has a CBDLF logo, and it</p>
<p style="text-align: right;">Page 143</p> <p>1 and look at everything its done in the past. Do we have 2 a statement that says "you should have books with sex in 3 it"? No. That's not what we do in that sort of crash 4 statement. Again, reductionistic. 5 There are works that have sexual content 6 that have educational significance that students relate 7 to, and they shouldn't be withdrawn from schools. And I 8 think -- certainly think they have traditional content 9 to warrant being standards in school. The ones that I 10 mentioned -- another of them -- you know, Anne Frank and 11 "Maus," and number of other books are such that I 12 certainly would think it would be, you know -- I would 13 understand why educators across the country would want 14 to have them because a lot of good graphic novels that 15 happened to have some sexual content. 16 But am I telling people because it has sex, 17 order this? That's a different kind of thing. Again, 18 it comes down to how your question is phrased and what 19 you're trying to get out of it. 20 Q. Right. 21 A. You know, because, again, there's a way to read 22 your question, which is, if I say, you know, every 23 school library should have a copy of -- of "Romeo and 24 Juliet" and "Merry Wives of Windsor" and "The Taming of 25 the Shrew," you could extrapolate that from Jeff is</p>	<p style="text-align: right;">Page 145</p> <p>1 says (as read): "Comics Start Here. An introduction to 2 graphic novels for librarians looking to start, expand, 3 or just better understand comic book collections." 4 A. Uh-huh. 5 Q. Is this part of materials that Comic Book LDF 6 provides to schools on what they should stock in their 7 libraries? 8 A. It is -- well, given -- again, this is -- this 9 is information, I think, is currently given on our 10 website. So this would be information that is being 11 distributed to or was distributed to librarians who are 12 interested in comics and graphic novels. 13 I'd have to refresh my memory of this 14 particular item. Remember, when I provided items for 15 discovery, I reread the items, but I covered a lot of 16 material, and so I'd have to reread the age range of the 17 librarians. 18 And the reason I want to qualify that is 19 that there are librarians who have maintained comic 20 collections in everything from, you know, preschool and 21 kindergarten to the Library of Congress, so -- and 22 colleges and major research universities, so there are a 23 lot of librarians out there. 24 Q. Are there other venues by which Comic Book LDF 25 informs librarians about comic books material and</p>

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<p style="text-align: right;">Page 146</p> <p>1 graphic novels besides online?</p> <p>2 A. We speak on panels, and, occasionally, we do</p> <p>3 things online. I mean, online panels, but it's been a</p> <p>4 while. We did more during COVID. But large -- largely,</p> <p>5 our interaction is panels are public events like -- but,</p> <p>6 yes. So we do speak to librarians and other events</p> <p>7 outside of comic context.</p> <p>8 Q. Are these panels at conventions and stuff like</p> <p>9 that? Festivals?</p> <p>10 A. There are comic conventions. There are</p> <p>11 academic conferences. There are librarian conferences,</p> <p>12 so it really -- just it's different.</p> <p>13 And by librarian there, I don't just mean</p> <p>14 school librarians because you know that there are public</p> <p>15 librarians as well. You know, or -- there's all sorts</p> <p>16 of different kinds of librarians, so, you know...</p> <p>17 Q. My questions on this document relate to Page 49</p> <p>18 of this document, which is the appendix.</p> <p>19 MR. BERG: If we can, go there.</p> <p>20 THE TECHNICIAN: (Complies.)</p> <p>21 A. Let's do it.</p> <p>22 MR. BERG: Jeremy, could we go to Page 49,</p> <p>23 please?</p> <p>24 THE TECHNICIAN: (Complies.)</p> <p>25 MR. BERG: Thank you.</p>	<p style="text-align: right;">Page 148</p> <p>1 I mean, my assumption would be that it has</p> <p>2 do with subjects in which that's a primary category, but</p> <p>3 I -- or -- but I really have to go back. It's been --</p> <p>4 gosh, it's been 30 years since I was librarian, so I</p> <p>5 apologize.</p> <p>6 Q. To the extent you have any knowledge on that</p> <p>7 subject heading, are you aware of any members of Comic</p> <p>8 Book LDF who have sold comic books in the sex category</p> <p>9 to Texas schools?</p> <p>10 A. Again, I'd really -- I just -- I just don't</p> <p>11 recall. I don't know.</p> <p>12 Q. So then the second box on the bottom "LC Genre</p> <p>13 Terms for Comics."</p> <p>14 What are "LC Genre Terms for Comics"?</p> <p>15 A. So think about -- again, there's -- have you --</p> <p>16 I have to ask you because I -- conversation. Library of</p> <p>17 Congress is very active in the comic space. There are</p> <p>18 different -- you can view things in terms of subject</p> <p>19 heading topics. You can view things in sort of genres</p> <p>20 of the comics medium like superheroes, and these are all</p> <p>21 just, like, different types of -- of comics that much</p> <p>22 like you would do, like, describe the Western as a genre</p> <p>23 or something like that. That's what this is.</p> <p>24 Q. Would a genre be akin to categories in a</p> <p>25 bookstore?</p>
<p style="text-align: right;">Page 147</p> <p>1 Q. (BY MR. BERG) So at the top, it says (as</p> <p>2 read): "Appendix, Subject Headlines, and Genre Terms."</p> <p>3 A. Uh-huh.</p> <p>4 Q. "Up to date as of May 15th, 2018."</p> <p>5 So before you assumed your current</p> <p>6 position, correct?</p> <p>7 A. Yeah, yeah, yeah, yeah, yeah.</p> <p>8 Q. So there's two boxes. The top box "LC Subject</p> <p>9 Headings for Comics."</p> <p>10 A. Uh-huh.</p> <p>11 Q. In the right column, it says (as read): "Sex</p> <p>12 comic books, strips, et cetera."</p> <p>13 A. Uh-huh.</p> <p>14 Q. What are LC Subject Headings, and what would be</p> <p>15 encompassed under sex comic books, strips, et cetera?</p> <p>16 A. Uh-huh. Let me think here for a second because</p> <p>17 I am trying to go back to my time as a bibliographer at</p> <p>18 Sterling Memorial Library at Yale. In my peripatetic</p> <p>19 wanderings, I, also -- between degrees -- was a</p> <p>20 full-time bibliographer.</p> <p>21 And Library of Congress heading, you know,</p> <p>22 you have card numbers. You have subjects. They're all</p> <p>23 categorized as you see here; and I would have to refresh</p> <p>24 my memory on what specifically falls under the subject</p> <p>25 heading for sex.</p>	<p style="text-align: right;">Page 149</p> <p>1 A. And, again, I'd have to talk to the people I</p> <p>2 know at the -- which I'm not offering to do. I just --</p> <p>3 if I were to do some research on this, you know, you</p> <p>4 just go to the source, Library of Congress.</p> <p>5 But I think it's a little bit more granular</p> <p>6 than that. And by the one -- on the one hand, it's more</p> <p>7 granular. On the other hand, it's not as comprehensive.</p> <p>8 So you can think of genres that are in the</p> <p>9 Library of Congress system that could correspond to</p> <p>10 things in bookstores, but you could also see that there</p> <p>11 are a lot of things in bookstores that don't line up</p> <p>12 with Library of Congress; and they may have other</p> <p>13 marker-driven means of the classifying the books.</p> <p>14 I mean, I don't -- yeah, yeah.</p> <p>15 Q. At the top of the right-most column is a genre</p> <p>16 called "pornographic comics."</p> <p>17 A. Uh-huh.</p> <p>18 Q. What sort of comics would fall within that</p> <p>19 category?</p> <p>20 A. I'd have to see which -- again, this is a</p> <p>21 Library of Congress. This isn't me, so I'd have to go</p> <p>22 back and take a look at what the Library of Congress</p> <p>23 classifies as pornographic comics.</p> <p>24 My -- my primary familiarity here is in</p> <p>25 law, and pornographic is an empty term, you know.</p>

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<p style="text-align: right;">Page 150</p> <p>1 Q. As we sit here, are you aware of any members of</p> <p>2 Comic Book LDF who have sold comic books in the</p> <p>3 pornographic comics genre --</p> <p>4 A. No.</p> <p>5 (Simultaneous cross-talk ensues.)</p> <p>6 Q. (BY MR. BERG) -- to Texas schools?</p> <p>7 A. Again, I'm not aware of that. I'm not aware of</p> <p>8 people who sold bible comics. I mean, it really -- it's</p> <p>9 just like a lack of awareness of how books are</p> <p>10 categorized by Library of Congress and how it aligns</p> <p>11 with what people have sold.</p> <p>12 Q. These guides that you give to librarians online</p> <p>13 or at panels at conferences or panels online, in the</p> <p>14 packets that you provide, do you recommend books that</p> <p>15 librarians should purchase?</p> <p>16 A. I -- again, the packets that I provide? I</p> <p>17 don't provide packets.</p> <p>18 When I do speaking events, there may be CLE</p> <p>19 material that has cases in it, or I provided a document</p> <p>20 that's a compilation of briefs that I wrote or, also,</p> <p>21 the other side wrote in their Virginia Beach case that</p> <p>22 I -- in which I was counsel, but I'm not distributing</p> <p>23 packets to librarians.</p> <p>24 You know, when I'm talking to librarians, a</p> <p>25 lot of what I do is answer questions about specific</p>	<p style="text-align: right;">Page 152</p> <p>1 states threaten prosecution, there is still a -- there</p> <p>2 isn't been a -- as much of that as it was in the 80s and</p> <p>3 90s and early 2000s.</p> <p>4 But the prospect of raiding laws, I mean,</p> <p>5 I've done speaking engagements where I was specifically</p> <p>6 asked to talk about Texas even though the conference is</p> <p>7 taking place outside of Texas because they're concerned</p> <p>8 about the impact. Texas is a big market, you know.</p> <p>9 It's like -- give you an example of just</p> <p>10 sort of how an analogy that may related to. You know, I</p> <p>11 did a -- I did undergraduate and grad work in Greek --</p> <p>12 and I did my Ph.D. in American religious history at the</p> <p>13 time when the creationists wars were really big in the</p> <p>14 1980s, and there was a lot of concern in the 80s and 90s</p> <p>15 about the impact of book orders in Texas that would</p> <p>16 restrict the -- that would have limitations on your</p> <p>17 discussions of evolution as opposed to creationism --</p> <p>18 what was called scientific creationism.</p> <p>19 And there was a ripple effect, chilling</p> <p>20 effect throughout the country in terms of what they</p> <p>21 could say about evolution in science textbook because</p> <p>22 Texas was such a big market. And where Texas went, then</p> <p>23 the rest of the country would feel like they had to go</p> <p>24 in terms of authorship acquisitions, distribution, so on</p> <p>25 and so forth.</p>
<p style="text-align: right;">Page 151</p> <p>1 books or policies or what the law is.</p> <p>2 Q. Does --</p> <p>3 (Simultaneous cross-talk ensues.)</p> <p>4 THE STENOGRAPHER: I'm sorry. Mr. Trexler,</p> <p>5 I need you to repeat your answer.</p> <p>6 THE WITNESS: Oh, I didn't realize he was</p> <p>7 going to jump in.</p> <p>8 A. I was going to say and where litigation like</p> <p>9 this stands. They want to know, you know, is -- is the</p> <p>10 HB 900 litigation over? What's happening in Arkansas?</p> <p>11 What's in Iowa? What's happening with the cosplay law</p> <p>12 in North Dakota, you know, that kind of thing -- or the</p> <p>13 gender-appropriate dress law in North Dakota.</p> <p>14 Q. (BY MR. BERG) The -- you'd agree that</p> <p>15 different states have passed laws regulating content in</p> <p>16 school libraries, correct?</p> <p>17 A. Different states have either passed laws or</p> <p>18 considered legislation, yeah.</p> <p>19 Q. To the extent that Comic Book LDF members</p> <p>20 allege that they are altering their content to account</p> <p>21 for these laws, is there any means to separate which</p> <p>22 state contributes what percentage to the amount that</p> <p>23 they're changing their work?</p> <p>24 A. I don't know that there is a way to do that. I</p> <p>25 do know that Texas looms large. Because, whereas, some</p>	<p style="text-align: right;">Page 153</p> <p>1 So I -- that's the feeling right now. The</p> <p>2 sense of fear and threats of the livelihood and not just</p> <p>3 on creators. I've had distributors tell me, you know,</p> <p>4 they don't distribute certain books in Texas and</p> <p>5 elsewhere, but Texas is a big driver. Because if Texas</p> <p>6 says no, then, again, ripple effects.</p> <p>7 There's also concern about ripple effects</p> <p>8 for things like the categorization, sexual explicit,</p> <p>9 which has, like I said, this overbroad definition that's</p> <p>10 hard to categorize. Well, you're not the only state</p> <p>11 that is -- regulates material or attempts to regulate</p> <p>12 material that's sexually explicit except, you know, the</p> <p>13 impact of a book being called sexually explicit has</p> <p>14 ramifications for people way beyond how it's</p> <p>15 characterized in a Texas library.</p> <p>16 So, for example, a book that has sexually</p> <p>17 explicit on it could provide grounds for a landlord to</p> <p>18 break a lease for a number of comic shops on the grounds</p> <p>19 that they're providing what's, you know, public,</p> <p>20 pornographic, or indecent or immoral material there.</p> <p>21 There's been a spike in moral clauses in recent years</p> <p>22 impacting all retailers including comic shop retailers.</p> <p>23 There are also several states like</p> <p>24 Missouri, a number one among them, that is trying to get</p> <p>25 sexually explicit material established as a legal</p>

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<p style="text-align: right;">Page 154</p> <p>1 category for criminal prosecution. In Missouri, I think 2 it's providing sexually explicit material to students. 3 So if you have a sexually explicit banner 4 on a book for Texas for purpose of exclusion or 5 inclusion, that would then provide fodder for somebody 6 in Missouri, say, to get somebody arrested for selling 7 it in a venue that where students could have access or 8 to making it accessible in school even though their law 9 would prohibit it because it doesn't -- the law doesn't 10 track in Missouri. 11 Or, again, you could just find a wave of 12 people in communities across the country who lose their 13 leases because of what you -- the way you categorize the 14 -- this is -- this is something that has significant 15 financial impact and has -- can, you know -- I've had 16 people tell me they don't want to have this branding 17 because there are people in their localities who will 18 mistakenly call them child pornographers or 19 pornographers, which you put that on Nextdoor, it 20 spreads and pretty soon, nobody wants to go in your door 21 -- go into your shop. 22 You know, this is -- this is something that 23 has financial impact, and you wouldn't have passed the 24 law if it didn't have financial impact because you 25 wouldn't have passed the law if it didn't -- wasn't</p>	<p style="text-align: right;">Page 156</p> <p>1 political, artistic, literary theme, or scientific 2 theme. 3 You have also a wave of laws that are 4 trying to strip librarians of immunity from criminal 5 prosecution for storing certain books. And think of 6 this in the public librarian context, a library is like 7 an archive to society. You study it. 8 So like in the -- you have a document up 9 here that is Tijuana Bibles, okay? I don't know if you 10 know what a Tijuana Bible is, but a Tijuana Bible is a 11 historic form of comic medium that were self-published 12 or published by companies that didn't have a public 13 identity, and they were sexually-themed humorous comics 14 based on popular movie and comic properties. So you 15 could -- like Popeye in a pornographic sexual scenario 16 or, you know, Superman or Clark Gable or something like 17 that. And, again, it's something that was seen as 18 pornography and seen for years in completely 19 nonmainstream distribution. 20 And, now, you have academic conferences, 21 you know, talking about Tijuana Bibles because as here 22 in other countries such as Japan, these comics, which 23 are considered, you know, Outreau and talking about 24 forbidden topics -- did things like normalize same-sex 25 relationships or use of contraceptives, things like that</p>
<p style="text-align: right;">Page 155</p> <p>1 going to affect sales and acquisitions. 2 Q. You mentioned Missouri, I think, proposing 3 criminal penalties. 4 Are there other states that have passed -- 5 A. Uh-huh. 6 Q. -- or considering passing laws with -- 7 (Simultaneous cross-talk ensues.) 8 THE STENOGRAPHER: Hold on. Mr. Trexler, 9 hold on one second. 10 Mr. Berg, can you repeat your question, 11 please? 12 Q. (BY MR. BERG) Are there states that are 13 considering or have passed laws criminalizing sexual 14 content in books? 15 A. Attempting or trying to, and they are different 16 types of laws. So there could be a law that -- a law 17 that tries to strip out the lapse provision for material 18 that's harmful to minors -- literary, artistic, 19 political, or scientific; or a law, which is similar to 20 what you're doing here. Also, similar to what you're 21 doing here and Missouri is one among them, a law that 22 tries to reduce a book to a particular image. So you 23 could a particular disqualifying image, even though the 24 rest of the context is different or provides reasons why 25 that scene is integral to a story or a greater</p>	<p style="text-align: right;">Page 157</p> <p>1 referred to in a humorous way that they become sort of 2 accepted; and they become a way of mediating social 3 change. So it's -- it's -- you know, and, now, there is 4 serious academic study -- of subject of academic study, 5 so a library would archive something like that. 6 And a librarian wouldn't want to go jail 7 for archiving a Tijuana Bible comic that some ambitious 8 sheriff would come in and say, aha, they have that book. 9 We consider to be pornography. We don't care about the 10 historical significance. We're going to arrest that 11 librarian. 12 In most states, you couldn't do that, and 13 there's states where you couldn't do that where that 14 immunity is now being stripped. So, you know, Texas is 15 unfortunately -- 16 Q. Which state are those -- is that happening? 17 A. I would have -- I would have -- I've written 18 about, it and I've spoken about it. Again, I'd have to 19 go back and see specific ones. 20 I think -- 21 Q. Does -- 22 A. I think I just did a brief on that, and I think 23 Iowa was one. 24 But, again, memory. I tend to read things, 25 write things, and I'll think of the most important</p>

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<p style="text-align: right;">Page 158</p> <p>1 detail to remember, which in this case is the trend. I</p> <p>2 don't know. I just don't keep in my mind all the</p> <p>3 different states. When you think about all the bills</p> <p>4 that have been going on across the United States in the</p> <p>5 past few years, it's just too much to remember.</p> <p>6 Q. Does Comic Book LDF recommend individual titles</p> <p>7 to Texas schools?</p> <p>8 A. And, again, this is -- I'm going to go make a</p> <p>9 distinction here between before I came onboard and what</p> <p>10 I've done since because I know what I've done since. I</p> <p>11 don't know everything that they did before.</p> <p>12 Q. Since you've -- since you've taken over.</p> <p>13 A. Since we've taken over, we've recommended that</p> <p>14 schools not exclude certain books like --</p> <p>15 Q. Have you affirmatively recommended book?</p> <p>16 A. We've recommended not removing certain books.</p> <p>17 I can't recall saying you should include this book</p> <p>18 because that's kind of not, you know, where -- Comic</p> <p>19 Book Legal Defense Fund.</p> <p>20 And so I affirmatively recommend graphic</p> <p>21 novels. I think every library should have a graphic</p> <p>22 novel, and that I do not have any differentiation based</p> <p>23 on the state. I think every library, school, and above</p> <p>24 should have graphic novels because graphic novels are</p> <p>25 the key to 21st-century literacy. You understand</p>	<p style="text-align: right;">Page 160</p> <p>1 would have to go back through my notes four years ago.</p> <p>2 Long time. Three years ago, two years ago.</p> <p>3 I just don't -- I just don't memorize them from year to</p> <p>4 year.</p> <p>5 (Simultaneous cross-talk ensues.)</p> <p>6 A. Books in the Complaint reflect books that have</p> <p>7 come up in Texas and elsewhere.</p> <p>8 Q. (BY MR. BERG) Does Comic Book LDF allege that</p> <p>9 the entity will suffer reputational harms due to HB 900?</p> <p>10 A. The entity and its members, yeah.</p> <p>11 Q. What reputational harms would the entity</p> <p>12 suffer?</p> <p>13 A. You know, I can say as somebody who's the</p> <p>14 executive or the interim director, it is common place</p> <p>15 for people to accuse us of being pornographers now and</p> <p>16 promoting pornography and promoting child pornography,</p> <p>17 which we do not do. We don't promote pornography. We</p> <p>18 don't promote child pornography. We don't say, you</p> <p>19 know, schools should have, you know, obscene material.</p> <p>20 We don't do it, but people say we do. People are very</p> <p>21 up front about that to my face and online and elsewhere.</p> <p>22 So, you know, that's what they -- that's</p> <p>23 what they try to do to us. That's what they try to do</p> <p>24 retailers, creators, publishers, distributors.</p> <p>25 There is a -- they know that there's</p>
<p style="text-align: right;">Page 159</p> <p>1 graphic novels. You know how do a video on YouTube.</p> <p>2 You understand how to do a PowerPoint. Graphic novels</p> <p>3 are the -- are how we communicate and how we're</p> <p>4 communicated to. So I think comics -- having graphic</p> <p>5 novels in the library, and Texas, as everywhere, is</p> <p>6 essential if you want to have kids be able to function</p> <p>7 in society for the next 100 to 200 years.</p> <p>8 But in terms of saying, you must have this</p> <p>9 book in your library, you know, that's not something I</p> <p>10 recall doing --</p> <p>11 (Simultaneous cross-talk ensues.)</p> <p>12 Q. (BY MR. BERG) Sorry. What was the last part?</p> <p>13 A. Outside of defending specific books.</p> <p>14 Q. You talked about defending specific books.</p> <p>15 What specific books have you recommended</p> <p>16 not be removed from library collections in Texas?</p> <p>17 A. Again, we have a number in several in that --</p> <p>18 in that thing. Look at the -- if you go back over the</p> <p>19 Katy ISD controversy before HB 900 -- before they did</p> <p>20 the blanket cutoff, they had a number of graphic novels</p> <p>21 that were removed. You can go back on that list and see</p> <p>22 books which we advocated working with the locals in that</p> <p>23 community.</p> <p>24 There was another community in Texas that</p> <p>25 comes to mind where, again, multiple graphic novels. I</p>	<p style="text-align: right;">Page 161</p> <p>1 certain things that are stigmatizing. They try to apply</p> <p>2 it to us. You know, it's wrong, but that -- but that's</p> <p>3 what they try to. Unfortunately, the people who do</p> <p>4 this, whether it's through misunderstanding or</p> <p>5 malevolence or political expediency -- and I think</p> <p>6 there's elements of all three in the movement -- have</p> <p>7 somehow decided is what they can do is we -- we fall</p> <p>8 into this category, which we don't; or our members fall</p> <p>9 into this categories, which they don't; and our suppers</p> <p>10 fall into the categories, which they don't.</p> <p>11 Q. And does Comic Book LDF -- has Comic Book LDF</p> <p>12 gained reputationally at all due to HB 900 and its</p> <p>13 resistance?</p> <p>14 A. You, earlier in this discussion, included a</p> <p>15 story. It was actually -- probably of all the stories</p> <p>16 that I've seen written about me, it's the one that I</p> <p>17 took closest to heart because I was a nonprofit lawyer</p> <p>18 when I went to law school and what I did for years in</p> <p>19 practice and as a professor and shared professor</p> <p>20 teaching nonprofit law and management. And so the</p> <p>21 "NonProfit Times," those are my people. Those are my</p> <p>22 colleagues.</p> <p>23 And I -- when I took over the organization,</p> <p>24 it was at the lowest point it had ever been in its</p> <p>25 history. Everybody, including the "NonProfit Times,"</p>

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<p style="text-align: right;">Page 162</p> <p>1 were saying that this organization needed to die because 2 of the actions of one man. I believe that it had a 3 higher mission to fulfill. I still believed that it had 4 value. I believe of the things it could do, not just 5 for comics, but for everybody out there for whom comics 6 could benefit.</p> <p>7 And our opposition to a number of 8 challenges, our opposition to HB 900, among some people 9 has affirmed or restored -- I don't want to say affirmed 10 -- has restored their belief that the Comic Book Legal 11 Defense Fund has a role to play, and that it's actually 12 serving the comics community by protecting the comic 13 arts.</p> <p>14 Now, I do find it somewhat interesting line 15 of legal argument to -- if this is where you're going 16 with it -- to say that we haven't suffered a harm 17 because of posing a harmful bill restores people faith 18 that we're opposing the right thing. It's a very 19 interesting line of argument. And maybe if you go 20 there, I'd be interested to see where you go with it.</p> <p>21 But -- but the fact is there are people who 22 have restored -- we've restored their faith in work 23 because we oppose HB 900 for legitimate reasons. And 24 there are also people who think that, because we do 25 this, we support child porn. And there are folks in our</p>	<p style="text-align: right;">Page 164</p> <p>1 synonymous with influencing legislation, which the 2 Treasury Department has a broad sort of definition that 3 can include everything from speaking with a legislature 4 about a resolution, advocating or opposing a resolution, 5 grassroots -- grassroots activity to get Congress to 6 take certain action or state legislature, or local 7 legislative body to take certain action.</p> <p>8 So do we lobby in the sense of making 9 statements that influence legislation? Well, yeah.</p> <p>10 Because think about it, there's a -- last year -- and I 11 don't know if it's public yet. So, hopefully, if it 12 isn't public yet, don't, you know, post this deposition 13 on YouTube or whatever until later. But -- but there's 14 an annual ban book -- a resolution in Congress honoring 15 Bans Books Week, which I advised on, and which uses 16 language that -- uses language with last year's and this 17 year's -- uses language that I personally wrote or 18 recommended.</p> <p>19 You know, there's -- I've testified on 20 legislation, not in Texas, but elsewhere. I've -- it's 21 a matter of public record that when there was a popular 22 arts Congress founded in Congress bipartisan -- a 23 bipartisan group of legislatures and the House of 24 Representatives to address legal issues in the comic 25 arts that -- that was announced, actually, with me on</p>
<p style="text-align: right;">Page 163</p> <p>1 community that get caught up in that because they don't 2 want to risk that association.</p> <p>3 It used to be standard in comic shops 4 wherever you would go across the country they would have 5 a little collection thing upfront for Comic Book Legal 6 Defense Fund, or it would be on their website, and there 7 are people who would do that now but for the fact, you 8 know, it's a problem because -- because of the way the 9 people attack. You know, we were up for a grant. And 10 because of our position -- we hit the very final. We 11 were approved for it, and then we were unapproved for it 12 because -- because of this.</p> <p>13 So, you know, that is several hundred 14 thousands of dollars that we've lost, and that is as 15 real as the reputational benefit of people who are 16 opposed to censorship believing that we are now an 17 anti-censorship organization, and that we haven't gone 18 off in some other direction, so...</p> <p>19 Q. Does Comic Book LDF engage in any lobbying? 20 A. Again, it depends on what you call lobbying. 21 I'm going to take it from the standpoint just so we can 22 avoid talking about legal definitions here or longer 23 than necessary.</p> <p>24 I look at it from the standpoint of a 25 nonprofit organization's lawyer where lobbying is</p>	<p style="text-align: right;">Page 165</p> <p>1 the panel with the congressman. And it was me and the 2 Library of Congress and comic creator and Representative 3 Garcia. So, you know, I'm there.</p> <p>4 Now, in terms of -- in terms of lobbying, 5 I'm -- I will proudly represent, because I have designed 6 this, it is 100 percent legal. It is 100 percent in 7 line with internal revenue and statutory standards.</p> <p>8 Q. Did Comic Book LDF engage in any lobbying on HB 9 900?</p> <p>10 A. Comic -- we did not testify in this one, and we 11 didn't consult with legislatures on this one.</p> <p>12 It's -- it's something -- I spoke to people 13 who are opposed to it, and I spoke -- I don't remember 14 all their names, but I did speak to people who are 15 opposed to it and being vocal about it.</p> <p>16 I think I -- I don't remember if I wrote 17 about it before or after it was passed. I'm sure I 18 spoke about it before it was passed because I think 19 that's how some people had reached out to me, but I'd 20 have to go back. I just don't recall.</p> <p>21 Q. Did --</p> <p>22 A. And I know I didn't speak. I didn't -- I 23 didn't go to any sessions or anything like that.</p> <p>24 Q. Did you or another representative of Comic Book 25 LDF submit public comment to the legislature on HB 900?</p>

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<p style="text-align: right;">Page 166</p> <p>1 A. No. No, we didn't.</p> <p>2 Again, to my knowledge, unless -- unless I</p> <p>3 did something that I don't remember, but it's, you know,</p> <p>4 because that was years ago at this point, but I don't</p> <p>5 recall doing that.</p> <p>6 Q. What is your understanding of Comic Book LDF</p> <p>7 members' expectation that Texas schools will purchase</p> <p>8 comics or books from them or their library materials</p> <p>9 from them in the future?</p> <p>10 A. And I can tell that is -- that this is based</p> <p>11 on, again, actual conversations.</p> <p>12 I encounter situations where schools are</p> <p>13 fundamentally conservative, not political conservative.</p> <p>14 But from a risk management perspective, school</p> <p>15 administrators in particular are conservative from a</p> <p>16 risk management perspective.</p> <p>17 (Simultaneous cross-talk ensues.)</p> <p>18 Q. (BY MR. BERG) Risk adverse.</p> <p>19 A. Risk adverse, right. So they're risk adverse.</p> <p>20 So one of the things that I've seen -- one</p> <p>21 of the fortunate side effects I've seen of this is a</p> <p>22 belief that graphic novels aren't worth the risk and --</p> <p>23 as a genre or as a medium. I should say as a medium --</p> <p>24 comic book medium. That they're not worth the risk.</p> <p>25 And part of the issue here is not just that</p>	<p style="text-align: right;">Page 168</p> <p>1 exist because, not just what happened in the 80s, but</p> <p>2 the great comic book scare of the 1950s culminating in</p> <p>3 the congressional hearings and -- or the Senate in the</p> <p>4 Comic Code in 1954, 70th anniversary. Dismal</p> <p>5 anniversary but it exists.</p> <p>6 I -- we've had cases ever since I came on</p> <p>7 here in 2020. It was slow at first because our</p> <p>8 reputation had been shattered. I dedicated -- you know,</p> <p>9 I shut down everything except our web store in terms of</p> <p>10 fundraising, and I dedicated this organization 100</p> <p>11 percent to service. And the word got around that we</p> <p>12 were helping people, and I started getting, you know,</p> <p>13 calls from people around the country to help them.</p> <p>14 It really, really spiked in -- and started</p> <p>15 spiking for us. There was already a lot in 2020 --</p> <p>16 bang, bang, bang, bang. You could see heat -- if you</p> <p>17 had a heat map, you'd see it was increasing from 2019,</p> <p>18 2018, 2017 -- if that's what you were doing and</p> <p>19 visualizing it, but we never did it formally.</p> <p>20 2021, it really hit. Starting with a</p> <p>21 couple of cases in Texas -- a couple of three cases in</p> <p>22 Texas we were involved in. Katy was one of them.</p> <p>23 And then I don't know if you remember the</p> <p>24 Virginia gubernatorial election in 2021, but there was a</p> <p>25 woman in Fairfax County who realized -- she had actually</p>
<p style="text-align: right;">Page 167</p> <p>1 graphic novels have been central to so much testimony</p> <p>2 and so many challenges and threats of arrest, but it's</p> <p>3 the name. I've had people tell me that graphic novels</p> <p>4 means graphic sexual novels and, you know, I've had to</p> <p>5 explain -- to help teachers -- explain to their</p> <p>6 principal that a graphic novel does not mean a novel</p> <p>7 that's filled with sex.</p> <p>8 So -- but if you have that somebody get</p> <p>9 into the minds of somebody or you have that get into the</p> <p>10 mind of somebody who likes to speak out at school</p> <p>11 boards, the path of least resistance is to say, well,</p> <p>12 you know what? Let's just not deal with. Let's get all</p> <p>13 the manga out of the classroom. Let's get all the manga</p> <p>14 out of the library. Let's get all the comics out of the</p> <p>15 library. It doesn't matter if it's a DC, Marvel, image,</p> <p>16 whatever. Let's just get them out because we're</p> <p>17 concerned that we're going to get caught up in this. Or</p> <p>18 let's make sure that they're all behind the circulation</p> <p>19 desk. And unless a student is a certain age or has a</p> <p>20 permission slip, they can't sign out the graphic novels.</p> <p>21 Graphic novels being targeted specifically as a medium.</p> <p>22 It's --</p> <p>23 Q. When did you first notice the backlash against</p> <p>24 graphic novels?</p> <p>25 A. Remember, we have a long history here. We</p>	<p style="text-align: right;">Page 169</p> <p>1 -- she had actually watched what was going on in Texas</p> <p>2 in a case we were involved. There was Leander. There</p> <p>3 was...</p> <p>4 She watched what was going on in Texas.</p> <p>5 She was watching the same Zoom school board meetings</p> <p>6 that I was watching as part of managing tis -- as</p> <p>7 working on this case, and said, hey, Zoom is visual. So</p> <p>8 she started doing, you know, graphic novel images on the</p> <p>9 YouTube -- on YouTube, and then they got posted to</p> <p>10 Twitter back when it was called Twitter, and it went</p> <p>11 viral.</p> <p>12 And then it went --</p> <p>13 (Simultaneous cross-talk ensues.)</p> <p>14 Q. (BY MR. BERG) What sort photographic image --</p> <p>15 graphic novel?</p> <p>16 (Simultaneous cross-talk ensues.)</p> <p>17 A. It was just some gender queer, yeah.</p> <p>18 Full disclosure, you know, I was -- Maya's</p> <p>19 lawyer in the Virginia Beach case, and so it was images</p> <p>20 from gender queer.</p> <p>21 And since then, you know, they do images</p> <p>22 from "Flamer;" they do images from "Maus." They do</p> <p>23 images.</p> <p>24 But that situation in the -- it was</p> <p>25 summer/fall of 2021 where then it became an electoral</p>

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<p style="text-align: right;">Page 170</p> <p>1 issue, Governor Youngkin -- now, Governor Youngkin 2 unexpectedly won the election. It became a local and 3 political issue across the country. 4 Again, straight line. Texas to Virginia. 5 Virginia, nationwide. The town where I live, it became 6 a big issue in New York, but all trace back -- you can 7 trace it back to the challenges in Texas, the school 8 board meetings in Texas watched by the person in 9 Virginia who added an individual element to it in terms 10 of holding books up to a camera, and then, bang, and 11 here we are. It has been as hot now a subject. Again, 12 I think in terms of heat maps. The number of challenges 13 and graphic novels at the center of it as it was in the 14 mid-to-late 1980s and in the 1950s. 15 MR. BERG: Could we go -- could we bring up 16 September 4th, 2024 "Plaintiff Comic Books Responses and 17 Objections to Defendant Morath's First Set of Discovery 18 Requests," please? 19 THE TECHNICIAN: (Complies.) 20 MR. BERG: Could we go to Page 9, Request 21 For Admission 1, please? 22 THE TECHNICIAN: (Complies.) 23 (Exhibit G marked.) 24 Q. (BY MR. BERG) Request for Admission 1 reads 25 (as read): "Admit that plaintiff has not been harmed by</p>	<p style="text-align: right;">Page 172</p> <p>1 not removing our objection to this particular phrase. 2 As I said, I very deliberately have not 3 been going over the documentation in this case. I would 4 certainly welcome, if you have any TEA rules of an 5 issued subsequent supplementing what's already in HB 900 6 -- I'd welcome you putting them on the screen so that I 7 could look at them and discuss the harm that they do to 8 CBDLF or its members. But without that level of 9 specificity, it's hard for me to answer that question. 10 Q. Would you admit that you're not aware of any 11 TEA rules passed after -- passed because of HB 900 that 12 have harmed Comic Book LDF Legal Defense Fund? 13 MR. LAMBERT: Objection, form. 14 A. Yeah, I would not answer it that way because 15 my -- I am aware of the fact that the existence of this 16 statute -- the existence of the TEA having the authority 17 to issue standards. And, again, when a -- talks, I 18 research this. I just haven't refreshed my memory for 19 this deposition. 20 So I -- there could even be, you know, 21 notes somewhere that -- there could even be an online 22 report, I don't know, of me talking about this and me 23 referring to a specific TEA rule or standard that I just 24 don't recall. So to say I'm not aware makes it sound 25 like I'm making a blanket statement based on research or</p>
<p style="text-align: right;">Page 171</p> <p>1 an TEA rules or standards implemented because of HB 2 900." 3 A. Uh-huh. 4 Q. And the response reads (as read): "CBDLF 5 objects to the phrase 'any TEA rules or standards 6 implemented because of HB 900' as vague and ambiguous. 7 Otherwise, the request is denied." 8 Did I read that correctly? 9 A. You did indeed. 10 Q. Are you aware of any TEA rule that has harmed 11 Comic Book LDF? 12 A. I think any -- the existence of any rule, which 13 I know you have had guidelines come out, right? In 14 addition to what's already in the rules that govern the 15 TEA that are already in HB 900, again, ambiguous. 16 Don't know exactly what you mean. Don't 17 know the scope of this question. The -- 18 (Simultaneous cross-talk ensues.) 19 Q. (BY MR. BERG) Let me rephrase. 20 Has TEA issued any rules since the passage 21 of HB 900 that has -- that have harmed Comic Book Legal 22 Defense Fund? 23 A. Again, with the objection preserved here -- 24 although, I'll have to defer to Michael on that -- but, 25 personally, I don't -- in answering this question, I'm</p>	<p style="text-align: right;">Page 173</p> <p>1 anything like that. And that, again, I think is -- I 2 know it's a rhetorical trap, but it's also one that I 3 think is a bit unfair and inaccurate in terms of what 4 it's representing. 5 What I'm telling you is I did not research 6 this in terms of the specifics of what TA has done since 7 the enactment of the bill to refresh my memory. I've 8 spoken on it in the past. I've written on it in past. 9 I just do not recall now. 10 And -- but I can tell you the mere 11 existence of the ability to issue those rules and the 12 authority to issue those rules is having a decisive 13 effect, a chilling effect, and ripple effects just in 14 terms of -- of, you know, people -- what books they want 15 to sell, what books they want to distribute, what books 16 they want to put on the shelves, what books they want to 17 create books, willingness to be associated with CBDLF. 18 All these things are affected by this bill. 19 This is -- you know, Texas does it big. I 20 remember this, you know, when I was teaching at SMU. 21 Big Tex at the fair, right? 22 HB 900 looms large nationwide. It's 23 probably -- it is without a doubt the most asked about 24 statute whenever speak anywhere in the country. 25 Q. (BY MR. BERG) Well, on the same page, let's</p>

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<p style="text-align: right;">Page 174</p> <p>1 look at Request For Admission No. 3. The request reads 2 (as read): "Admit that HB 900 does not require 3 plaintiffs to create ratings for books sold to other 4 parties" -- to parties other than public schools or 5 open-enrollment charter schools in Texas." The response 6 was (as read): "CBLDF objects to the request because it 7 calls for a legal conclusion. CBLDF also objects to the 8 request because it calls for speculation and seeks 9 information outside of CBLDF's personal knowledge. 10 Otherwise, the request is denied." 11 Let me rephrase the request. Would you 12 agree it's true that Comic Book Legal Defense Fund could 13 still sell books to non-Texas schools without rating 14 them? 15 A. And, again, when we do Comic Book Legal Defense 16 Fund, I also want to encompass our members because they 17 are, you know, directly impacted by this and our 18 supporters throughout the comics community. 19 There's requires, and there's requires. 20 The market power of Texas is such that if you have a 21 rule that something has to be a certain way for Texas. 22 It costs money and time to make books that are different 23 from -- to produce books that are different from that, 24 so that is a cost that is imposed. A cost that in 25 today's book market where there's a lot of --</p>	<p style="text-align: right;">Page 176</p> <p>1 does that. Makes sure the publisher has that on the 2 title and -- or on the front cover or wherever it is -- 3 because I'm not sure it has to be on the front cover -- 4 and it's invoiced by a school. But it's entirely 5 possible, even probable, that the library has books that 6 aren't invoiced by the school, direct with the 7 publisher/distributor, but that they picked them up with 8 some other third-party vendor. I know at SMU when I was 9 there, you know, we had a bunch of books that I got off 10 of eBay and Amazon that ended up -- various libraries 11 through donations or whatever. 12 Q. What about selling directly to a company or in 13 Austin? 14 A. Again -- again -- 15 Q. If a member sold 1,000 copies of a graphic 16 novel to Tesla -- 17 A. Uh-huh. 18 Q. -- would they be required to rate the books 19 before selling them? 20 A. I can tell you from the perspective of a 21 company. Given the risk that those books could end up 22 in a library in Texas, a publisher would feel that it 23 had to do that because they didn't have a choice because 24 there's a possibility it could end up there, because the 25 school would feel like, oh, my, God, it didn't have the</p>
<p style="text-align: right;">Page 175</p> <p>1 particularly graphic novel market where there's a lot of 2 economic pressure on retailers and creators and 3 publishers. It's a cost that most people can't bear. 4 There's also the problem of -- of -- the -- 5 you could say the security of -- or just monitoring the 6 supply chain and distribution. People buy books in a 7 number of different ways. They go to Amazon. They go 8 to conventions they go to ALA. They go to local 9 bookstores. They go to flea markets. They go to 10 addall.com. They go to eBay. The marketplace for books 11 is such that people buying books for libraries or 12 classrooms is not limited to people who are invoiced by 13 a school district. Books come from all over. 14 And there's no way for a publisher, a 15 distributor, somebody like us -- charity that's selling 16 books for fundraising, there's no way for us to police, 17 to monitor the entirety of the distribution to make sure 18 that a book that we've sold that has the CBLDF brand on 19 it or that a book that anybody else sells as a member or 20 supporter to make sure that those books don't end up in 21 a Texas school. 22 And the reputational harm is real. If you 23 have something where they -- suppose you have a 24 publisher who rates a book sexually relevant and just 25 for when they're invoiced by Texas, or the distributor</p>	<p style="text-align: right;">Page 177</p> <p>1 rating, or if it got into the system and somehow the 2 fact that it didn't have a rating was missed, the 3 addition didn't have a rating was missed, then it gets 4 reported, and the TEA reviews it and said, oh, this 5 should have been sexually explicit and guess what? 6 We're banning the publisher from selling all books to 7 us. Even though it got there through this convoluted 8 chain where it went from Tesla and the people at Tesla 9 either donated it -- donated it to the library or the 10 spouse of somebody at Tesla worked at the library, and 11 they took it there and put it in the library. They're 12 all sort of -- and these are all realistic. 13 You know, for years, I lived in a small. I 14 read tens -- probably tens of thousands of comics -- 15 thousands of thousands of comics. Lifelong reader since 16 I was a little-little kid, and I don't have room for 17 comics. 18 So I bought a ton of comics and graphic 19 novels, and I donated them to libraries because I liked 20 them, and those -- a number of them get cataloged. Some 21 of get sold. A number of them get cataloged. Imagine, 22 you know, that gets into a school library that way. 23 And I know -- I know there are people out 24 there wherever there are instances of book banning 25 including in Texas where they see a book being banned,</p>

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<p style="text-align: right;">Page 178</p> <p>1 they start donating books to the library to stock. And</p> <p>2 publisher/distributor, you know, they could get busted</p> <p>3 for that. That could harm their reputation. They could</p> <p>4 get a reputation of being kind of an unsafe publisher to</p> <p>5 buy books from because the books are getting into this</p> <p>6 state without being raided in a way that the TA thinks</p> <p>7 they should be rated.</p> <p>8 So you can say it's not required, but it is</p> <p>9 required because the risk is too great.</p> <p>10 Q. What about, say, self-published author who has</p> <p>11 determined that they are not going to comply with the</p> <p>12 law because of ideological -- of an ideological position</p> <p>13 that they're taking. If they sold a book to someone,</p> <p>14 would they be required to rate it for that sale?</p> <p>15 A. If they sold a book to somebody and it got to</p> <p>16 Texas and it was branded sexually explicit or sexually</p> <p>17 relevant and the author got the reputation for not</p> <p>18 honoring that, it's realistic to assume that there could</p> <p>19 be essentially some blacklisting by retail stores or</p> <p>20 distributors or even publishers, who might want to pick</p> <p>21 up that author, because they view it as too much of a</p> <p>22 risk for them because the book could end up in the</p> <p>23 school and could end up causing problems.</p> <p>24 Again, the word "required" has a lot of</p> <p>25 freight. And to say, well, the law only requires XYZ</p>	<p style="text-align: right;">Page 180</p> <p>1 immoral, they don't think of it as immoral within the</p> <p>2 boundaries of a particular state.</p> <p>3 I am in this business. I talk to these</p> <p>4 people all the time on both sides of the fence because I</p> <p>5 believe in having these conversations. I read the</p> <p>6 material. I read a lot of material from the other side,</p> <p>7 and this is not a local phenomenon. This is a -- this</p> <p>8 is a national phenomenon. It is about signaling things</p> <p>9 nationally.</p> <p>10 And so you say, am I testifying to state of</p> <p>11 mind? No. I'm just saying that this is a national</p> <p>12 movement.</p> <p>13 It is a movement when Texas has influence,</p> <p>14 and I just think it's unrealistic to think that people</p> <p>15 in Texas think it's poor, little old us that nobody's</p> <p>16 paying attention to because it's just common knowledge</p> <p>17 that that's not true.</p> <p>18 Q. Have you ever sold a book that you were -- has</p> <p>19 Comic Book LDF ever sold a book that it was morally</p> <p>20 opposed to?</p> <p>21 MR. LAMBERT: Objection, form.</p> <p>22 A. We're a free-express organization.</p> <p>23 Q. (BY MR. BERG) What does that mean?</p> <p>24 A. We're an organization that is dedicated to</p> <p>25 protecting the right to express oneself, to distribute</p>
<p style="text-align: right;">Page 179</p> <p>1 and ignore the market power that Texas has -- when I say</p> <p>2 just based on the realities of politics, part of what</p> <p>3 Texas is doing when it enacts laws like this is they're</p> <p>4 looking beyond Texas. They want to have national</p> <p>5 influence. It's not just that they're influenced in</p> <p>6 Texas. People have ambition just in terms of wanting to</p> <p>7 make a difference in life but also political ambition,</p> <p>8 and they know what happens in Texas in the book market</p> <p>9 affects everywhere. And if they regulate it in Texas,</p> <p>10 it's going to be regulated everywhere at least be seen</p> <p>11 as a risk everywhere.</p> <p>12 So I find that a bit disingenuous to say,</p> <p>13 oh, we're just doing this in Texas for this narrow crew,</p> <p>14 and they really don't have to do this. There's not much</p> <p>15 harm. No, that's not the real world, and, honestly,</p> <p>16 that's not why they do this.</p> <p>17 Q. I -- I mean, are you testifying to the state of</p> <p>18 mind individual legislators now? I think we're a little</p> <p>19 afield here.</p> <p>20 A. Yeah, I think we are, but I say that wryly, but</p> <p>21 I don't think we are because realistically I've known a</p> <p>22 number of people in politics in Texas and beyond, and</p> <p>23 that is not just me talking off the top of my head.</p> <p>24 People have ambition, and people want to have an</p> <p>25 influence. And when they say that this is book is</p>	<p style="text-align: right;">Page 181</p> <p>1 oneself, to distribute their works, to have their works</p> <p>2 out in the marketplace regardless of one's point of</p> <p>3 view, regardless of the perception of the decency or</p> <p>4 morality of any particular -- of any content.</p> <p>5 We've defended works that I know people</p> <p>6 find -- don't agree with, even people in the CBLDF. I</p> <p>7 haven't read everything that the CBDLF has ever sold. I</p> <p>8 know that it has sold things that I wouldn't have sold.</p> <p>9 Q. Did that make you uncomfortable?</p> <p>10 A. Huh?</p> <p>11 Q. Did that make you uncomfortable that Comic Book</p> <p>12 LDF had sold things that you wouldn't have sold?</p> <p>13 A. It's -- we're -- it's -- what makes me</p> <p>14 uncomfortable is the notion that I would think that I</p> <p>15 was inconsistent in my principle that free expression</p> <p>16 only -- if I believe that free expression only applied</p> <p>17 to things that I liked, then I'd leave this job</p> <p>18 tomorrow. It is the nature of what I do, and it is the</p> <p>19 nature of sort of how I look at life that if I believe</p> <p>20 in free expression, that is, free expression for all,</p> <p>21 even people who disagree with me, even -- even images or</p> <p>22 words or books or graphic novels or posters or</p> <p>23 animations that they say or do things that I wouldn't</p> <p>24 necessarily say or do, but it's the nature of protecting</p> <p>25 free expression through the comic arts. That used to be</p>

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<p style="text-align: right;">Page 182</p> <p>1 an American value, you know.</p> <p>2 Q. Doesn't selling a book imply an opinion about</p> <p>3 it?</p> <p>4 A. No.</p> <p>5 There are plenty of booksellers, and they</p> <p>6 are plenty of -- just like there are plenty of libraries</p> <p>7 out there that have politically, philosophically,</p> <p>8 morally diverse points of view. I mean, you can go into</p> <p>9 a Barnes & Noble or you can go into a Books-A-Million,</p> <p>10 and you can see books that say transwomen are women; and</p> <p>11 books that say, there are only two sexes and only two</p> <p>12 genders; and they can never change. And you can look at</p> <p>13 it and say, that's a philosophical statement selling</p> <p>14 those books; or you can look at it and say the</p> <p>15 bookseller is -- there are different markets, and it's</p> <p>16 accommodating different markets; and it's not making a</p> <p>17 philosophical statement at all. So, you know, different</p> <p>18 perspectives.</p> <p>19 And the same thing for public libraries.</p> <p>20 You know, a public library has lots of -- a public</p> <p>21 library has value to the extent that it, you know, is an</p> <p>22 archive of lots of -- America, which is diversity of</p> <p>23 opinion, which is very important to me.</p> <p>24 (Simultaneous cross-talk ensues.)</p> <p>25 A. Is just one point of view is not doing its job</p>	<p style="text-align: right;">Page 184</p> <p>1 advising on a case, and there's a number of things that</p> <p>2 were just covered by privilege. There's a lot that</p> <p>3 needed to be sorted through with privilege being a very</p> <p>4 serious issue for us.</p> <p>5 There was, you know, junk, I guess, you</p> <p>6 could say in terms of, you know, news notices or</p> <p>7 something like that that you could find through a Google</p> <p>8 search that just incidentally used the words "sexually</p> <p>9 explicit," in it, but it wasn't the document that we</p> <p>10 produced or anybody sent to us as content. It's just</p> <p>11 something that, say, showed up on the Associated Press.</p> <p>12 And because I have an article on a search thing on book</p> <p>13 banning or something or graphic novel ban or something</p> <p>14 with Google notifications, then every time those words</p> <p>15 "graphic novel ban" show up, it has that, and a number</p> <p>16 of them have sexually -- the words "harmful," "obscene,"</p> <p>17 "sexually explicit" in them or "pervasively vulgar,"</p> <p>18 anything that has to do with PICOT, you know, on a</p> <p>19 notice, then, again, it just becomes unwieldy to do.</p> <p>20 So it's -- in terms of material that's</p> <p>21 relevant to this case or is not protected by privilege,</p> <p>22 what I tried to do was find something that was -- when</p> <p>23 you got the disclosures, if it had something that was</p> <p>24 related to what you're talking about in this case, it</p> <p>25 was here. But to produce that other stuff, that was</p>
<p style="text-align: right;">Page 183</p> <p>1 as public library. That's a censorship machine.</p> <p>2 Q. (BY MR. BERG) I have a question on same</p> <p>3 document Page 6, Request For Production No. 6.</p> <p>4 A. Uh-huh.</p> <p>5 Q. Starts on the bottom.</p> <p>6 MR. BERG: If Jeremy could follow.</p> <p>7 A. Uh-huh.</p> <p>8 Q. (BY MR. BERG) Request for Production No. 6 (as</p> <p>9 read): "Produce all emails from January 1st, 2020,</p> <p>10 through the present and all searchable electronic</p> <p>11 documents containing any of the phrases" -- "of the</p> <p>12 following phrases: Sexually explicit,</p> <p>13 sexually-explicit, sexually relevant, sexually-relevant,</p> <p>14 obscene, harmful material, harmful-material, pervasively</p> <p>15 vulgar, or pervasively-vulgar."</p> <p>16 Did I read that correctly?</p> <p>17 A. Yes, you did.</p> <p>18 Q. Did Comic Book LDF perform a search of</p> <p>19 electronic documents for documents containing these</p> <p>20 search terms?</p> <p>21 A. Again, we objected to it, and I'm preserving</p> <p>22 the objection.</p> <p>23 I went through and was searching for terms</p> <p>24 in email and what I found was a number of problems.</p> <p>25 People come to us looking for legal advice or I am</p>	<p style="text-align: right;">Page 185</p> <p>1 just too -- too great of a risk of the stuff that was</p> <p>2 privileged or just really -- it's not even clear to me</p> <p>3 how it's relevant to what -- whether newspapers article</p> <p>4 that mentions sexual explicit is even relevant to this</p> <p>5 particular -- to this particular question.</p> <p>6 Q. Was it unclear whether that document would be</p> <p>7 responsive to the request?</p> <p>8 A. Yeah.</p> <p>9 MR. LAMBERT: Objection, form.</p> <p>10 Q. (BY MR. BERG) You mentioned that when you</p> <p>11 performed a search, you came across a number of</p> <p>12 privileged documents, correct?</p> <p>13 A. Yeah.</p> <p>14 Q. Has Comic Book LDF produced a privilege log in</p> <p>15 this matter?</p> <p>16 A. No, we have not.</p> <p>17 Q. Do you intend to?</p> <p>18 MR. LAMBERT: Objection, form.</p> <p>19 (Simultaneous cross-talk ensues.)</p> <p>20 Q. (BY MR. BERG) Sorry. What was that?</p> <p>21 A. I said, I will speak with counsel.</p> <p>22 Q. Okay. I'm going to speak with counsel too.</p> <p>23 MR. BERG: Pending this conversation, I'm</p> <p>24 going to leave this deposition open, but otherwise I</p> <p>25 pass the witness.</p>

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1	MR. LAMBERT: Yeah, no further questions	1	CHANGES AND SIGNATURE
2	from the plaintiffs.	2	WITNESS NAME: JEFFREY TREXLER
3	MR. BERG: Can we go off the record,	3	DATE OF DEPOSITION: September 24, 2024
4	please?	4	
5	THE STENOGRAPHER: Just --	5	PAGE LINE CHANGE REASON
6	THE VIDEOGRAPHER: Going off the record --	6	
7	THE STENOGRAPHER: Hold on one second.	7	
8	THE VIDEOGRAPHER: Is it okay to go off the	8	
9	record?	9	
10	THE STENOGRAPHER: Hold on one second.	10	
11	Mr. Berg and Mr. Lambert, did you want to	11	
12	get these as expedited as well?	12	
13	MR. BERG: Yes, please.	13	
14	MR. LAMBERT: What would be the regular	14	
15	time line?	15	
16	THE STENOGRAPHER: Ten business days from	16	
17	today.	17	
18	MR. LAMBERT: Okay, yeah. Well, we'll do	18	
19	expedited then.	19	
20	THE STENOGRAPHER: And since this is	20	
21	federal, are there any other stipulations you want to	21	
22	add on the record?	22	
23	MR. BERG: No.	23	
24	MR. LAMBERT: No.	24	
25	THE STENOGRAPHER: Okay. Then, that's all	25	

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1	for me.	1	I, JEFFREY TREXLER, have read the foregoing
2	MR. BERG: Thank you, Abigail.	2	deposition and hereby affix my signature that same is
3	THE STENOGRAPHER: Thank you.	3	true and correct, except as noted above.
4	(Simultaneous cross-talk ensues.)	4	
5	THE VIDEOGRAPHER: And would anybody like	5	_____
6	to order a video?	6	JEFFREY TREXLER
7	MR. LAMBERT: Not at this time.	7	
8	MR. BERG: Yes, please.	8	
9	THE VIDEOGRAPHER: Thank you. This will	9	THE STATE OF _____)
10	conclude today's deposition. The time is 14:26 p.m.	10	COUNTY OF _____)
11	Central, and we are off the video record.	11	Before me, _____, on
12	(Proceedings concluded at 2:26 p.m.)	12	this day personally appeared JEFFREY TREXLER, known to
13		13	me (or proved to me under oath or through
14		14	_____) (description of identity card or
15		15	other document) to be the person whose name is
16		16	subscribed to the foregoing instrument and acknowledged
17		17	to me that they executed the same for the purposes and
18		18	consideration therein expressed.
19		19	Given under my hand and seal of office this
20		20	____ day of _____, 2024.
21		21	
22		22	
23		23	
24		24	_____ NOTARY PUBLIC IN AND FOR
25		25	THE STATE OF _____ Commission Expires: _____

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<p>1 UNITED STATES DISTRICT COURT</p> <p>2 WESTERN DISTRICT OF TEXAS</p> <p>3 AUSTIN DIVISION</p> <p>4 BOOK PEOPLE, INC., VBK,)</p> <p>5 INC., AMERICAN)</p> <p>6 BOOKSELLERS ASSOCIATION,)</p> <p>7 ASSOCIATION OF)</p> <p>8 AMERICAN PUBLISHERS,)</p> <p>9 AUTHORS GUILD, INC.,)</p> <p>10 COMIC BOOK LEGAL DEFENSE)</p> <p>11 FUND)</p> <p>12)</p> <p>13 Plaintiffs,)</p> <p>14) Civil No.</p> <p>15 VS.) AU: 23-CV-00858-ADA</p> <p>16)</p> <p>17 MARTHA WONG, KEVEN ELLIS,)</p> <p>18 MIKE MORATH)</p> <p>19)</p> <p>20 Defendants.)</p> <p>21)</p> <p>22 REPORTER'S CERTIFICATION</p> <p>23 DEPOSITION OF JEFFREY TREXLER</p> <p>24 September 24, 2024</p> <p>25</p> <p>That the deposition transcript was delivered to Mr. Zachary Berg.</p> <p>That a copy of this certificate was served on all parties and/or the witness shown herein on _____.</p> <p>I further certify that pursuant to FRCP Rule 30(f)(1) that the signature of the deponent: _____ was requested by the deponent or a party before the completion of the deposition and that signature is to be before any notary public and returned</p>	<p>1 COUNTY OF _____)</p> <p>2 STATE OF TEXAS)</p> <p>3</p> <p>4 I hereby certify that the witness was notified</p> <p>5 on _____, that the witness has 30 days or</p> <p>6 (_____days per agreement of counsel) after being</p> <p>7 notified by the officer that the transcript is available</p> <p>8 for review by the witness and if there are changes in</p> <p>9 the form or substance to be made, then the witness shall</p> <p>10 sign a statement reciting such changes and the reasons</p> <p>11 given by the witness for making them;</p> <p>12 That the witness' signature was/was not returned as</p> <p>13 of _____.</p> <p>14 Subscribed and sworn to on this, the _____</p> <p>15 day of _____, 2024.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20 ABIGAIL GUERRA, Texas CSR 9059</p> <p>21 Expiration Date: 02/28/26</p> <p>22 MAGNA LEGAL SERVICES</p> <p>23 Firm Registration No. 633</p> <p>24 1635 Market Street, 8th Floor</p> <p>25 Philadelphia, Pennsylvania 19103</p> <p>(215) 207-9460</p> <p>(215) 207-9461</p>
<p>1 within 30 days from date of receipt of the transcript.</p> <p>2 If returned, the attached Changes and</p> <p>3 Signature Page contains any changes and the reasons</p> <p>4 therefore:</p> <p>5 _____ was not requested by the deponent or a</p> <p>6 party before the completion of the deposition.</p> <p>7 I certify that I am neither counsel for,</p> <p>8 related to, nor employed by any of the parties or</p> <p>9 attorneys in the action in which this proceeding was</p> <p>10 taken, and further that I am not financially or</p> <p>11 otherwise interested in the outcome of the action.</p> <p>12 Certified to by me this _____ day of _____,</p> <p>13 2024.</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>ABIGAIL GUERRA, Texas CSR 9059</p> <p>Expiration Date: 02/28/26</p> <p>MAGNA LEGAL SERVICES</p> <p>Firm Registration No. 633</p> <p>1635 Market Street, 8th Floor</p> <p>Philadelphia, Pennsylvania 19103</p> <p>(215) 207-9460</p> <p>(215) 207-9461</p>	

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CHANGES AND SIGNATURE

WITNESS NAME: JEFFREY TREXLER

DATE OF DEPOSITION: September 24, 2024

PAGE	LINE	CHANGE	REASON
12:18		Change "Andras" to "Andreas"	
24:8		Delete ", "	
24:22		Change "." to ";"; delete a space: change "Again" to "again"	
27:6		Add "a" before "publisher"	
31:3		Change "system" to "systems"	
31:4-5		Change "We are" to "Are we" and add "?" at end of sentence	
47:24		Change "An" to "And"	
66:20		Capitalize "Criterion Collection"	
68:23		Change "Miller tests" to "the Miller test"	
69:7		Change "peer" to "prurient"	
69:16		Change "this Comic" to "the Comic"	
73:1		Change "I ring" to "Offering"	
94:23		Change "conscious" to "conscience"	
95:10		Change "bible" to "Bible"	
102:15		Change "want to" to "want"	
108:19		Change "MPA a" to "MPAA"	
117:16		Change "modern dally" to "motte and bailey"	
123:7		Change "conscious" to "conscience"	
125:6		Change "Eugenics" to "eugenics"	
150:8		Change "bible" to "Bible"	

CHANGES AND SIGNATURE

WITNESS NAME:

DATE OF DEPOSITION:

JEFFREY TREXLER

September 24, 2024

PAGE / LINE

CHANGE

REASON

152:4 Change "raiding" to "rating"

156:23 Change "Outreau" to "outr  "

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160:14 Change "common place" to "commonplace"
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162:4 Change "believe of" to "believe in"

162:17 Change "of posing" to "opposing"

164:22 Change "arts Congress" to "arts caucus"

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167:15 Change "image" to "Image"
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169:17, 20 Change "gender queer" to "Gender Queer"

177:13 Change "small." to "small apartment."

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180:22 Change "express" to "expression"
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184:18 Change "PICOT" to "Pico"
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Jeffrey Trexler

September 24, 2024
Page 189

I, JEFFREY TREXLER, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

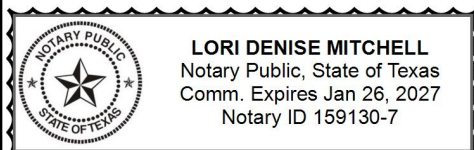
eSigned by Black Knight EXP-DocVerify: 2024-10-25 10:14:12 EDT
Jeffrey Trexler
4434656/24477463/34330246

JEFFREY TREXLER

THE STATE OF TEXAS)COUNTY OF TRAVIS)

Before me, Lori Denise Mitchell, on this day personally appeared JEFFREY TREXLER, known to me (or proved to me under oath or through driver's license) (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 25th day of October, 2024.



eSigned by Black Knight EXP-DocVerify: 2024-10-25 10:14:25 EDT
Lori D. Mitchell
4434656/24477463/67041

NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS
Commission Expires: 01-26-2027

Notarial Act Performed by Audio visual communication

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